cility Name: Chemet	w	her	=
cility Identification Number: 120 045	8 84.	3 8 of .	
1 General Correspondence A (d-A-)(-Y	1	B.2 Permit Docket (B.1.2)	
2 Part A / Interim Status A-2		.1 Correspondence	
.1 Correspondence		2 All Other Permitting Documents (Not Part of the ARA)	
.2 Notification and Acknowledgment	X	C.1 Compliance - (Inspection Reports)	Ī
.3 Part A Application and Amendments	X	C.2 Compliance/Enforcement	
.4 Financial insurance (Sudden, Non Sudden)		.1 Land Disposal Restriction Notifications	1
.5 Change Under Interim Status Requests		.2 Import/Export Notifications	1
.6 Annual and Biennial Reports		C.3 FOIA Exemptions - Non-Releasable Documents	1
A.3 Groundwater Monitoring		D.1 Corrective Action/Facility Assessment	1
.1 Correspondence		.1 RFA Correspondence	1
.2 Reports A.3.5		.2 Background Reports, Supporting Docs and Studies	
A.4 Closure/Post Closure		.3 State Pretim. Investigation Memos	
.1 Correspondence A.Y.IA.Y.S	,	A RFA Reports Dc/4	
2 Closure/Post Closure Plans, Certificates, etc. A. 4.+(2)	2	D. 2 Corrective Action/Facility investigation	
A.5 Ambient Air Monitoring		.1 RFI Correspondence	
.1 Correspondence		.2 RFI Workplan	_
.2 Reports		.3 RFI Program Reports and Oversight	
B.1 Administrative Record	1		
	<del>-  -</del>	5. RFI QAPP	_

(otal - 25

.6 RFI QAPP Correspondence		.8 Progress Reports	
.7 Lab Data, Soil-Sampling/Groundwater	2	D.5 Corrective Action/Enforcement	-
.8 RFI Progress Reports		.1 Administrative Record 3008(h) Order	
.9 Interim Measures Correspondence		.2 Other Non-AR Documents	
.10 Interim Measures Workplan and Reports		D.6 Environmental Indicator Determinations	
0.3 Corrective Action/Ramediation Study		.1 Forms/Checklists	
.1 CMS Correspondence	1	E. Boilers and Industrial Furnaces (BIF)	
.2 Interim Measures		.1 Correspondence	
,3 CMS Workplan	T	.2 Reports	
.4 CMS Draft/Final Report		F Imagery/Special Studies (Videos, photos, dieks, maps, blueprints, drawings, and other special materials.) / full	-
.5 Stabilization	T	G.1 Rick Assessment	
.6 CMS Progress Reports		.1 Human/Ecological Assessment	T
.7 Lab Data, Soil-Sampling/Groundwater	2	.2 Compliance and Enforcement	1
D.4 Corrective Action Remediation Implementation		.3 Enforcement Confidential	T
.1 CMI Correspondence	1	.4 Ecológical - Administrative Record	T
.2 CM Workplan		.5 Permitting	1
.3 CMI Program Reports and Oversight		.6 Corrective Action Remediation Study	T
.4 CMi Draft/Final Reports		.7 Corrective Action/Remediation Implementation	†
.5 CMI CAPP ್ರೀ.4 ಟ	1,	.8 Endangered Species Act	†
.6 CMi QAPP Correspondence	†	.9 Environmental Justice	†
1	+	<del></del>	+

Note: Transmittal Letter to Be Included with Reports.  Comments:						
	William .		 	<del></del>	 	
	4		 			
	)m }					

,	Files Inventory Sheet		
File Series: Chen	netco, Inc. RCRA 478	8A Box #/1/2	
		Folder Name/Folder Description	
•	:	Box #1 of 2	
ILD 048 843 809	(Folder #01)	A.3.1-A.3.2 Correspondence/Monitoring (1998)	
ILD 048 843 809	(Folder #02)	A.3.4 Annual Report (1996)	
ILD 048 843 809	(Folder #03)	A.3.4 Quarterly Reports (1994)	
ILD 048 843 809	(Folder #04)	A.4.2 Closure Plan (1986)	
ILD 048 843 809	(Folder #05)	A.4.2 Closure/Post-Closure Plans (1990)	
ILD 048 843 809	(Folder #06)	A.4.4 Closure Sampling Data (1989)	
ILD 048 843 809	(Folder #07)	B.1.1 Permit Correspondence (1993)	
		Box #2 of 2	
ILD 048 843 809	(Folder #08)	B.1.2 Part B Permit Application (1985)	
ILD 048 843 809	(Folder #09)	B.1.11 Post Closure Permit Application (1993/1 of 2/3)	
ILD 048 843 809	(Folder #10)	B.1.11 Post Closure Permit Application (1993/2 of 2/3)	
ILD 048 843 809	(Folder #11)	F.1 Imagery/Special Studies (1997)	
		Box #1 of 2)  A.4.4 Status Report/Requirements (1993)  A.4.4 Groundwater Closure Plan (1988)  Box #1 of 2)  YOUR FRE LOCATION  A.4.4 Status Report/Requirements (1993)  Code for lives:	
ILD 048 843 809	(Folder #01)	A.4.4 Status Report/Requirements (1993) Code for these	
ILD 048 843 809	(Folder #02)	A.4.4 Groundwater Closure Plan (1988)	
ILD 048 843 809	(Folder #03)	A.4.4 Closure/Post-Closure Plan (1989)	
ILD 048 843 809	(Folder #04)	B.1.2 Part B Permit Application (1990)	
ILD 048 843 809	(Folder #05)	B.1.5 Permit Modification - Class 2 (1991)	
		Box #2 of 2	
ILD 048 843 809	(Folder #06)	B.1.1 Permit Correspondence (1995)	
ILD 048 843 809	(Folder #07)	B.1.2 Part B Permit Application (1993)	
ILD 048 843 809	(Folder #08)	B.1.6 Exemptions, Waivers/Variances (1992)	
ILD 048 843 809	(Folder #09)	F.1 Imagery/Special Studies (1990)	
ILD 048 843 809	(Folder #10)	F.1 Aerial Photographic Analysis (1987)	
		Box #1 of 1 RCRA 207 🗸	
ILD 048 843 809	(Folder #01)	C.1 Compliance Inspection Reports (1996-1997)	
ILD 048 843 809	(Folder #02)	C.1 Compliance Inspection Reports (1984-1993)	
ILD 048 843 809	(Folder #03)	C.2 Compliance and Enforcement (1982-1995)	
_			

	Files Inventory Sheet		
File Series: Chem	etco Inc. : RCRA	A 478A	Box #/1/1
Folder ID:		Folder Name/Folder Description $\lor$	
		Box #1 of 1	
ILD 048 843 809	(Folder #01)	A.4.2 Partial Closure Plan (1988)	
ILD 048 843 809	(Folder #02)	A.4.2 Closure/Post-Closure Plan (1991)	
ILD 048 843 809	(Folder #03)	A.4.4 Closure Sampling (1991)	
		Box #1 of 1 RCRA 206B ∨	
ILD 048 843 809	(Folder #01)	D.2.2 RFI Plan (1996)	
ILD 048 843 809	(Folder #02)	D.2.5 QAPP (1988)	
ILD 048 843 809	(Folder #03)	D.2.6-D.2.7 QAPP Correspondence/Groundwat	er/Soil (1990)
ILD 048 843 809	(Folder #04)	D.2.7 Analytical Data Report (August/December	er 1998)
ILD 048 843 809	(Folder #05)	D.2.7 Analytical Data Report (July 16, 1998)	
ILD 048 843 809	(Folder #06)	D.2.7 Analytical Data Report (July 10, 1998)	
ILD 048 843 809	(Folder #07)	D.2.7 Sampling/Analysis (1983-1996)	
		·	
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Home > Search Results > Facility

#ILD048843809 Chemetco, Inc.

#### **FILES IN RECORD CENTER**

Reorganization Date: 6/17/2009 Permit Status: Yes Total Files: 25

View File Inventory Index

Request Documents

Files have been checked out from the Records Center by the following people. Select a name to view the Document Request Form.

- Kuefler/Smith, 8/25/1998
- Pat Kuefler, 5/11/2001
- Pat Kuefler, 5/13/1999
- Chris Black, 5/22/2001

#### RETIRED RECORDS

Accession Number: 412-05-0027 Shipment Date: 1/11/2005 Box Descriptions/Total: 1 / 2 Volume: 1

Accession Number: 412-05-0042 Shipment Date: 1/10/2005 Box Descriptions/Total: 1/2 Volume: 1

Accession Number: 412-05-0035 Shipment Date: 1/6/2005 Box Descriptions/Total: 1 / 1 Volume: 1

Accession Number: 412-04-0696 Shipment Date: 11/2/2004 Box Descriptions/Total: 2 / 2 Volume: 2

Accession Number: 412-96-0326 Shipment Date: 3/14/1996 Box Descriptions/Total: 2 / 39 Volume: 35





Home > Facility > Retired Record

CBI:

No

Shipment Date:

1/11/2005

Agency File Code:

ENFO 207b

Accession Number:

412-05-0027

Volume (cubic ft):

1

Disposition Authority:

N1-412-95-7/5b

Disposal Date:

1/31/2018

Location:

006052-006052SAN

Box Number

**Facility** 

IND005081526

BRC Rubber Groups Inc.

Description

Motions/orders, CAFO, state reports, settlements/amendements 15

1996

1

ILD048843809 Chemetco, Inc.

Compliance inspection reports, compliance and enforcement 1982-





Home > Facility > Retired Record

CBI:

No

**Shipment Date:** 

1/10/2005

Agency File Code:

RCRA 478a

**Accession Number:** 

412-05-0042

Volume (cubic ft):

1

**Disposition Authority:** 

N1-412-94-4/17

**Transfer Date:** 

1/31/2012

Location:

234302-234302SAN

Box Number

**Facility** 

ILD055409940 Abbott Laboratories, Inc. (North

Chicago Facility)

1

#LD048843809

Chemetco, Inc.

Description

Blueprints, maps & drawings Vols 1-2 of 2, 1991

Partial closure plans, post closure plan, closure sampling data, 198





Home > Facility > Retired Record

CBI:

Nο

Shipment Date:

1/6/2005

**Agency File Code:** 

RCRA 206a

**Accession Number:** 

412-05-0035

Volume (cubic ft):

1

**Disposition Authority:** 

N1-412-94-4/4a

Transfer Date:

1/31/2019

Location:

234289-234289SAN

**Box Number** 

Facility

ILD048843809

Chemetco, Inc.

Description

RFI plan, QAPP, QAPP corresp, GW soil, analytical data report, sa

and analysis report 1983-1998





<u>Home</u> > <u>Facility</u> > Retired Record

CBI:

No

**Shipment Date:** 

11/2/2004

**Agency File Code:** 

RCRA 478a

**Accession Number:** 

412-04-0696

Volume (cubic ft):

2

**Disposition Authority:** 

N1-412-94-4/17a

**Transfer Date:** 

1/31/2019

Location:

547375-547376BAN

Box Number	Facility	Description
1	ILD048843809 Chemetco, Inc.	Correspondence/monitoring, annual reports, quarterly reports, clos plan, closure/post closure plans, closure sampling data, permit correspondence 1986-1998
2	ILD048843809 Chemetco, Inc.	Part B Permit Appl, Part B post closure permit appl Vol 1-2 of 3, blu 1985-1997



HOME | CHANGE PASSWORD | SIGN OUT

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RECORDSMARAGEMENTSYSTE

Search Records A

**Add Facility** 

**Document Requests** 

**Records Retirement** 

Records To NARA

Home > Facility > Retired Record

CBI:

No

Shipment Date:

3/14/1996

**Agency File Code:** 

RCRA 478a

Accession Number:

412-96-0326

Volume (cubic ft):

-35

Disposition Authority:

N1-412-94-04/20a

**Transfer Date:** 

1/31/2011

Location:

016516-016550SAN

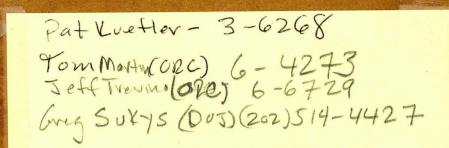
Box Number	Facility	Description
1	OHD004288270 Ranco North America, LP (Plain City)	Quality control data, closure cert docs for F006 sludge stor fac 1
1	OHD004288288 Ranco North America, Inc.	Quality control data, closure cert docs for F006 sludge stor fac 1
2	OHD004288288 Ranco North America, Inc.	Sampling analytical results, closure cert docs, lab reports, closur container storage closure plan 1878-1989
2	OHD004288270 Ranco North America, LP (Plain City)	Sampling analytical results, closure cert docs, lab reports, closur container storage closure plan 1878-1989
3	OHD004288288 Ranco North America, Inc.	Hydrogeol eval, gw monitoring reports, closure plans 1982-1989
3	OHD004288270 Ranco North America, LP (Plain City)	Hydrogeol eval, gw monitoring reports, closure plans 1982-1989
4	OHD004288288 Ranco North America, Inc.	Surface impoundment closure plan, sampling field trips, RFA sapplan, closure plans, closure cert, 1984-1988
4	OHD004288270 Ranco North America, LP (Plain City)	Surface impoundment closure plan, sampling field trips, RFA sarplan, closure plans, closure cert, 1984-1988
5	OHD004240396 Steelcraft Manufacturing Company	Correspondence, Part B Appl, financial info (no date)
6	ILD000802702 Solutia Inc. (W.K. Krummrich Plant)	GW sampling program, Part B Permit Appl, 1990
7	OHD004198784 Beazer East, Inc. (Youngstown Site)	Crab creek sampling, CAFO submittals, Phase I report, Phase II hydrogeo study, CME, monitoring well data, gw quality assessm revision, soil analysis data, hydrogeol invest report, gw monitorir

summary, 1984-1990

8	ILD010284248 CWM (CID Recycling/Disposal Facility)	Chemical analysis forms, Part B monitor reports, backgroun 1988-1990
9	ILD010284248 CWM (CID Recycling/Disposal Facility)	Part B Permit Appl, closure plan, (no date)
10	ILD010284248 CWM (CID Recycling/Disposal Facility)	Part B Permit Appl, Post-Closure permit appl, NOD response 19 1987
11	ILD010284248 CWM (CID Recycling/Disposal Facility)	Part B Permit Appl 1983
12	ILD010284248 CWM (CID Recycling/Disposal Facility)	Part B Permit Appl, summary judgement, response to closure planespondents exhibit 1987
13		w assessment p
14	V designation	<del>Classia</del> 990
15	IND093219012 Heritage Environmental Serv., LLC (Indianapolis)	Material safety data sheets, (no date)
16	IND093219012 Heritage Environmental Serv., LLC (Indianapolis)	Material safety data sheets, 1990
17	ILT180019945 SCA Chemical Svcs, Ind Chicago Incinerator	SOP, Part B Permit Appl, Tank storage, 1987-1990
18	ILT180019945 SCA Chemical Svcs, Ind Chicago Incinerator	Part B Permit Appl, Exposure info 1983-1989
19	ILT180019945 SCA Chemical Svcs, Ind Chicago Incinerator	Part B Permit Appl, closure plan, PCB trial burn testing final repo
20	ILT180019945 SCA Chemical Svcs, Ind Chicago Incinerator	Part B revisions, trial burn plan, gw info, legal papers, Part B Pel Appl (no date)
21	ILD980700967 Amoco Oil Company (Main Plant)	Interim status post closure plan pond 1, soil and sludge analytica testing report 1988-1990
22	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Soil boring logs, Part B Permit Appl, GW monitoring report, Lab studies, GW quality assessment report 1985-1989
23	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	R and D application, demonstration unit, public comments and p letters, performance test, cert of mailing 1987-1989
24	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Part B Permit Appl, Landfarm operation plan, maps, facility repodraft permits, 1987-1988
25	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Closure plans, soil survey, lab reports, gw monitoring, land treati demons, 1986-1990
26	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Soil work plan, response to NOD, Part B Permit Appl, 1985-1
27	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Part B Permit Appl, soil work plan, land treatment closure plan
28	OHD042157644	

	BP Chemicals, Inc. (Lima Refinery)	Ponds closure plan, trial burn plan, Part A and B Permit, 1987-1:
29	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Closure plan, Part B Permit Appl, North thermal oxidizer report, survey report, land treatment and monitoring plans, site inspection report, gw report, closure plan and review 1985-1988
30	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Memos, reports, hydrogeol exhibits/double liner variance, Part B Appl 1985-1987
31	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Response to NOD, gw monitoring, Part B Permit Appl, 1987-198
32	OHD042157644 BP Chemicals, Inc. (Lima Refinery)	Sludge pond area gw quality assessment, Part B Permit appl, Hydrogeol invest and gw study, contingency plan, sampling anal closure plan, trial burn plan 1986-1987
33	ILD000819946 Beazar East, Inc. (Carbondale Facility).	Standards data package, data summary (no date)
34	ILD000819946 Beazar East, Inc. (Carbondale Facility).	RFI Lab data reports (no date)
35	ILD000819946 Beazar East, Inc. (Carbondale Facility).	Data worksheets, inorganic analysis data, ms data file header, C summary data package, raw work sheets, 1989-1990

EDIT RECORD DELETE RECORD





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# IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

In re:	)	In Proceedings Under
CHEMETCO, INC.	)	Chapter 7
	)	BK 01-34066

#### CERTIFICATE OF SERVICE

I, LAURA K. GRANDY, hereby certify that on this 21<sup>st</sup> day of October, 2002, I have forwarded a copy of the Order approving Motion for Authority to Settle and Compromise Avoidance Claims/Actions and Motion to Limit Notice of Motions to Settle and Compromise Avoidance Claims/Actions, by mailing a copy of same in an envelope addressed to:

Teresa A. Generous Greensfelder, Hemker & Gale, P.C. 10 South Broadway, Suite 2000 St. Louis, MO 63102-1774

Jim Morgan Senior Assistant Attorney General 500 South Second Street Springfield, Illinois 62706

Dan Nester Bryan Cave 1 Metropolitan Sq # 3600 St Louis, MO 63102

Joel Kunin Carr Korein Tillery 412 Missouri Avenue E. St. Louis, IL 62201

Cheryl A. Kelly Thompson Coburn, LLP One Firstar Plaza, Suite 3500 St. Louis, MO 63101

Wagner Equipment Co. PO Box 23077 Belleville IL 62223-0077

Alison D. Bauer Torys 237 Park Avenue New York, NY 10017

Industrial Services of America, Inc. c/o K. Gail Russell 3000 National City Tower 101 South Fifth Street Louisville, KY 40202

CEMCO P.O. Box 92500 Albuquerque, NM 87199-2500

Douglas B. Rosner Goulston & Storrs, P.C. 400 Atlantic Ave. Boston, MA 02110-3333

Mike Wenzinger Quantum Resources Inc. 10750 SW Denny Road Beaverton OR 97075

CSD Environmental Services, Inc. c/o Stephen A. Tagge Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. Suite 800 Illinois Building P.O. Box 5131 Springfield, IL 62705

Robert A. Breidenbach Goldstein & Pressman, PC 121 Hunter Avenue, Suite 101 St. Louis, MO 63124

Mueller Group, Inc. 110 Corporate Drive, Ste. 10 Portsmouth, NH 03801 Attn: General Counsel

Tom Morton 200 Clinton Avenue, Suite 1000 Huntsville, AL 35801

Gregory L. Sukys U.S. Department of Justice Environmental Enforcement Sect. PO Box 7611 Washington, DC 20044

J. Martin Jeffery M. Trevino Associates Regional Counsel U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

Andrew J. Doyle U.S. Department of Justice Environmental Defense Section PO Box 23986 Washington, DC 20026-3986

Craig A. Smith Suelthaus & Walsh, P.C. 7733 Forsyth, 12<sup>th</sup> Floor St. Louis, MO 63105

Steven J. Reisman, Esq. Cutris, Mallet-Prevost, Colt & Mosle, LLP, 101 Park Avenue New York, NY 10178-0061 Mark S. Samila, Esq. Kahn, Dees, Donovan & Kahn, LLP 501 Main Street Fifth Main Financial Plaza, Suite 305 Post Office Box 3646 Evansville, IN 47735-3646

Wise El Santo Company PO Box 8360 St. Louis MO 63132

Austin Metal Iron Co. PO Box 2115 Austin TX 78767

Jerry W. Hill Hill & Calk 1511 Judson Rd., Suite B Longview, TX 75601

Floyd Horton Horton Supply Company 300 E. Chestnut Street Springfield, MO 65806

Diane G. Reed Reed & Reed 501 N. College St. Waxahachie, TX 75165

Daniel D. Doyle, Esq. Spencer Fane Britt & Browne, LLP 120 S. Central Ave., 5<sup>th</sup> Floor St. Louis, MO 63105

David A. Lander One Firstar Plaza, Suite 3200 St. Louis, MO 63101

LeRoy Lambert 29 Broadway New York, NY 10006

Donna Yeager ATEC, Inc. 858 Kingsland St. Louis, MO 63130

Mary Grace Diehl 600 Peachtree St., N.E., Suite 5200 Atlanta, GA 30308-2216 Ronald E. Yarbrough, Phd Geo Technical Associates, Inc. P.O. Box 529 Collinsville, IL 62234Alice Whitten AmeriCredit 4000 Embarcadero Arlington, TX 76014

David W. Hercher Miller Nash LLP 3500 U.S. Bancorp Tower 111 S. W. Fifth Avenue Portland, OR 97204-3699

Edward J. Hopper U. S. Trustee, Becker Building Room 1100, 401 Main Street Peoria, IL 61602

Paul A. Levine, Esq. Attys for Manufacturers & Traders Trust Co. 50 Beaver St. Albany, NY 12207

Keith D. Price Sandberg, Phoenix & von Gontard, P.C. One City Centre, 15<sup>th</sup> Floor 515 N. 6<sup>th</sup> Street St. Louis, MO 63101

Randall D. Crocker, Esq. von Briesen, Purtell & Roper, s.c. 735 N. Water Street, Suite 1000 P.O. Box 3262 Milwaukee, WI 53201-3262

American Recycling c/o Larry R. Boyd Abernathy, Roeder, Boyd & Joplin, PC 1700 Redbud Blvd., Suite 300 McKinney, TX 75069

Lewis S. Morantz, Esq. 21255 Califa Street Woodland Hills, CA 91367-5021

Petag Corporation ATTN: D. L. Peterson P.O. Box 15651 Houston, TX 77220

Phyllis B. Dolinko Office of the Solicitor United States Dept. of Labor 230 S. Dearborn, Suite 844 Chicago, IL 60604

Penni S. Livingston 6001 Old Collinsville Rd. Fairview Heights, IL 62208

with first class postage prepaid and by depositing same in a United States mailbox outside 720 West Main Street, Belleville, Illinois, at approximately 5:00 p.m.

/s/ Laura K. Grandy Aufflury

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings Under
	)	Chapter 7
CHEMETCO, INC.,	)	
	)	BK 01-34066
DEBTOR(S).	)	
	ORDER	

This matter having come before the Court pursuant to a Motion For Authority to Settle and Compromise Avoidance Claims/Actions and Motion to Limit Notice of Motions to Settle and Compromise Avoidance Claims/Actions (the "Motion") filed herein by the Trustee, Laura K. Grandy. It appearing to the Court that Rule 9019 of the Federal Rules of Bankruptcy Procedure permits the Court to: (a) authorize settlement and compromise of claims as set forth in the Motion without further notice or hearing; and (b) limit Notice of Motions for Authority to Settle and Compromise a Controversy or Controversies. It further appearing to the Court that the settlement and compromise authority requested in the Motion is necessary and appropriate because, among other things, it will eliminate the costs and expenses attending the filing and service of numerous motions for authority to settle and compromise claims;

IT IS THEREFORE ORDERED that the Trustee is hereby given authority to settle and compromise avoidance actions described in the Motion without further notice or hearing within the following classes and according to the following parameters:

<u>Class of Claim</u> <u>Settlement Authority Sought</u>

\$5,000.00 or less Plenary Settlement Authority

Preferences:

\$5,000.00 to \$20,000.00 75% of principal sum demanded after deducting the valid new

value and ordinary course defenses

Preferences:

\$20,000.00 and over 80% of principal sum demanded after deducting valid new value

and ordinary course business defenses

Fraudulent Transfers less than 1 year before the petition

80% of principal sum demanded

Fraudulent Transfers more than 1 year but less than 2 years before the petition

70% of principal sum demanded

Fraudulent Transfers more than 2 years but less than 3 years before the petition

50% of principal sum demanded

Fraudulent Transfers more than 3 years but less than 4 years before the petition

35% of principal sum demanded

IT IS FURTHER ORDERED that the Trustee shall have the further and additional authority to dismiss an avoidance action if the Trustee determines, in her sole discretion, that there are valid defenses to such an avoidance action.

IT IS FURTHER ORDERED that the Trustee shall have the further and additional authority to amend an avoidance action so as to dismiss portions of the relief requested therein in the event the Trustee, in her sole discretion, determines that there are valid defenses to a portion or portions of the relief sought.

IT IS FURTHER ORDERED that if the Trustee elects to settle and compromise claims outside the classes and/or parameters described above, she shall file a Motion for Authority to Settle and Compromise such claims and Notice of same, and she shall be required to serve such motion and notice only on the following persons: the Debtor, counsel for the Debtor, the United States Trustee, the parties to the avoidance action or dispute, and other persons who file or have filed requests for notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

IT IS FURTHER ORDERED that counsel for the trustee shall serve a copy of this

Order by mail to all interested parties who	were not served electronically.
ENTERED: October 31, 2002	/s/ Kenneth J. Meyers UNITED STATES BANKRUPTCY JUDGE



### U.S. Department of Justice

### Environment and Natural Resources Division

Andrew J. Doyle Environmental Defense Section P.O. Box 23986 Washington, DC 20026-3986

Telephone (202) 514-4427 Facsimile (202) 514-8865

September 18, 2002

### VIA FEDERAL EXPRESS OVERNIGHT

Clerk of Court United States District Court for the Southern District of Illinois 750 Missouri Avenue P.O. Box 249 East St. Louis, IL 62202-0249 (618) 482-9371

Re: <u>United States v. Chemetco</u>, Civil Case No. 00-670-DRH (S.D. Ill.)

Dear Clerk:

Enclosed for filing please find an originally signed copy of "PARTIES' JOINT MOTION TO EXTEND SUMMARY JUDGMENT RE-FILING DATE," with Attachment A ("Status Report By the Bankruptcy Trustee") and a proposed order.

Additionally, I have enclosed a duplicate copy. If you would, please date-stamp this copy and return it to me in the provided envelope.

If you have any questions or concerns, please do not hesitate to contact me at 202-514-4427.

Sincerely,

Andrew J. Doyle

cc: counsel for Co-Plaintiff State of Illinois counsel for Defendant-Chemetco's Estate

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, ex rel. JAMES E. RYAN,	)	
Attorney General of the State of Illinois,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Nos. 00-670-DRH,
	)	00-677-DRH (consolidated)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge
	)	

### [Expedited Consideration Requested]

### PARTIES' JOINT MOTION TO EXTEND SUMMARY JUDGMENT RE-FILING DATE

Defendant, CHEMETCO, INC. ("Chemetco"), and Plaintiffs, UNITED STATES OF AMERICA ("United States") and STATE OF ILLINOIS ("Illinois"), hereby move the Court to extend by a period of six (6) months the date by which summary judgment motions package must be re-filed in accordance with the Court's Order of April 30, 2002. In support of this joint motion, the parties state as follows:

Order of Apr. 30, 2002.

<sup>&</sup>lt;sup>1</sup> In that Order, the Court struck as moot the United States' and Illinois' then-pending motions for partial summary judgment, but granted the parties leave

to file new summary judgment motions. If no issues have been altered, a declaration of such by the Plaintiff will result in the Court reinstating the previously filed motions. In any event, the full motion packets, if necessary, are now due on Friday, September 20, 2002.

- 1. As with the parties' prior joint motion (Dkt. 42), this joint motion is brought to facilitate settlement negotiations and with the hope of narrowing or eliminating issues ultimately submitted to the Court. As the Court is aware, on November 13, 2001, Chemetco filed a voluntary petition under Chapter 7 of the Bankruptcy Code. See In re Chemetco, No. 01-34066 (Bankr. S.D. Ill.). Since then, the parties (i.e., representatives of the bankruptcy trustee and the Plaintiffs) have been engaging in settlement discussions, including discussions about ongoing environmental concerns at the facility. These settlement discussions have continued.
- 2. The environmental problems associated with the former Chemetco plant site are numerous, complex, and not easily resolved. These issues may include the clean-up, disposal and/or remediation of contamination associated with an approximately 10-acre slag pile, a zinc oxide "bunker," portions of Long Lake, possible ground water issues beneath the former plant, the former plant itself, and wetlands that were probably filled in by Chemetco.
- 3. The bankruptcy trustee is working with the State of Illinois and U.S. EPA to identify all environmental problems at the plant. Attached to this motion is a statement by the bankruptcy trustee setting forth the various efforts her office has made toward identifying and resolving the environmental issues associated with the former Chemetco plant site. See Attachment A.
- 4. To continue to conserve the parties' resources and to allow them to focus on settlement discussions rather than litigation, the parties request that the Court extend the deadline for re-filing motions for summary judgment from September 20, 2002, until March 20, 2003.

WHEREFORE, the parties request that the Court grant this joint motion for extension; a proposed order is attached at the back of this motion (after the Trustee's Status Report, Attach. A).

Dated: 9/18/02 By:

Respectfully submitted,

PENNI S. LIVINGSTON

Livingston Law Office

6001 Old Collinsville Road

Building 4 – Suite B

Fairview Heights, IL 62208

(618) 628-7700

Attorney for Defendant and Bankruptcy Trustee

THOMAS L. SANSONETTI

Assistant Attorney General

Environment and Natural Resources Division

Dated: Olsho By:

ANDREW J. DOYLE

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Attorneys for Plaintiff United States of America

Dated: 9/18/02 By:

JAMES MORGAN

Senior Assistant Attorney General

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Springfield, Illinois 62706

(217) 524-7506

Attorney for Plaintiff-State of Illinois

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)
and PEOPLE OF THE STATE OF	)
ILLINOIS, ex rel. JAMES E. RYAN,	) '
Attorney General of the State of Illinois,	)
Plaintiffs,	)
v.	) Civil No. 00-670-DRH ) (consolidated with 00-677-DRH)
CHEMETCO, INC.,	) CJRA Track C
	) Hon. David R. Herndon
Defendant.	) U.S. District Judge
	)

## STATUS REPORT BY THE BANKRUPTCY TRUSTEE

**NOW COMES** the Bankruptcy Trustee, Laura Grandy, in her capacity as Trustee for the estate of the Former Chemetco, Inc., by and through her attorney Penni S. Livingston, and reports the following status of this matter to the Court as follows:

1. The Trustee has retained valuable employees at the site along with a professional geologist and an environmental lawyer to assist in the environmental matters, including the matter before this Court and the matter before the Illinois Pollution Control Board. The Trustee and these professionals have diligently worked to bring about appropriate regulatory use of materials at the former Chemetco plant ("Facility") including the slag at the Facility and the materials in the zinc oxide bunker. The State and Federal government professionals have been regularly consulted in this process and slow but steady progress is being made as to the processing of both of these materials in a manner consistent with regulatory

requirements. It is the Trustee's intent to properly sell these materials and thereby make available financial resources to address additional environmental concerns at the Facility.

- 2. The Trustee has abated several immediate environmental concerns at the Facility, including insuring the proper handling of stormwater and fugitive dust and the proper storage and disposal of hazardous materials located at the site, and by removing other materials from the site as approved by the government entities.
- 3. Formal and informal negotiations have been on-going with respect to numerous issues of environmental concern including those identified in the pleadings in this case. While the parties have not always agreed on the legal interpretation of pertinent regulations, a cooperative, collaborative venture between the Trustee and the governmental agencies best describes the state of affairs at this facility at this time.
- 4. As so many environmental and regulatory issues are being effectively worked out by the parties, it is appropriate for this Court to grant the Joint request for continuation of the Stay in this matter. The Trustee anticipates that a continuation of the current collaborative approach will result in a better outcome for everyone involved and for the environment.

5. As the next 90 to 120 days are critical, the Trustee recommends the Stay be continued for at least 120 days to allow the parties to concentrate their efforts on bringing about proper processing and removal of slag and zinc oxide rather than on litigation.

Respectfully Submitted,

Laura Grandy, Trustee

BY: PENNI S. LIVINGSTON

Attorney for the Trustee Attorney #06196480 Livingston Law Office

6001 Old Collinsville Road 4B Fairview Heights, II. 62208

618/628-7700

US ENVIRONMENTALY
PROTECTION AGENCY
OFFICE OF FIEGUNAL
OFFICE OUNSEL

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 5

Date: 20 June 2002

Subject: Referral of RCRA Subtitle C Corrective Action Facility

to CERCLA

From:

Gerald W. Phillips Morrect Ne Action Manager

Waste, Pesticides and Toxics Division

To:

Joseph Dufficy, Chief

Brownfield/Early Action Section

The facility is currently known as: Chemetco Inc., at 3576 Chemetco Lane, Hartford, Illinois 62048, U.S. EPA ID No. ILD 048 843 809.

The RCRA program has determined it is most advantageous that the Superfund program address the cleanup responsibilities at this facility. Because Superfund has taken responsibility for the cleanup of this entire facility, the Superfund program will be tracking its progress under their (e.g., GPRA) measures. The facility will continue to be tracked on the RCRA program's GPRA Baseline or measures. A summary of the current status is attached.

If you accept this referral, please signify your acceptance by signing the certification below. Please return the executed certification to me.

Superfund accepts the referral of this facility.

Joseph Dufficy, Chief Brownfield/Early Action Section Date

cc: George Hamper, ECAB, WPTD

Hak Cho, WMB, WPTD

5/1/2000

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	In Proceedings Under Chapter 7
CHEMETCO, INC.,	)	Case No. 01-34066
DEBTOR.	)	United States' Proof of
DEDI OK.	)	Claim on Behalf of United
	)	States Environmental
	)	Protection Agency

- 1. This Proof of Claim is filed by the Attorney General of the United States on behalf of the United States Environmental Protection Agency ("U.S. EPA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States.
- 2. This Proof of Claim relates to obligations and liabilities of Debtor and Debtor's estate under Sections 301(a) and 309(b) and (d) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a) and 1319(b) and (d); and Section 3008(a), (g) and (h) of the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a), (g) and (h), with respect to Debtor's secondary copper smelting facility in Hartford, Madison County, Illinois
- 3. Debtor was, at the time of the filing of the petition initiating this case, and still is liable to the United States pursuant to the Clean Water Act and the Resource Conservation and Recovery Act. The grounds of liability are as follows:
- (a) Debtor violated the provisions of a National Pollution Discharge Elimination

  System permit issued by the State of Illinois in 1996 under the Clean Water Act;



### U.S. Department of Justice

### Environment and Natural Resources Division

Andrew J. Doyle
Environmental Defense Section
P.O. Box 23986
Washington, DC 20026-3986

Telephone (202) 514-4427 Facsimile (202) 514-8865

April 18, 2002

#### VIA FEDERAL EXPRESS OVERNIGHT

Clerk of Court
United States District Court
for the Southern District of Illinois
750 Missouri Avenue
P.O. Box 249
East St. Louis, IL 62202-0249
(618) 482-9371

Re: <u>United States v. Chemetco</u>, Civil Case No. 00-670-DRH (S.D. Ill.)

Dear Clerk:

Enclosed for filing please find an originally signed copy of "PARTIES' JOINT MOTION TO STAY SUMMARY JUDGMENT PROCEEDINGS," with proposed order.

Additionally, I have enclosed a duplicate copy. If you would, please date-stamp this copy and return it to me in the provided envelope.

If you have any questions or concerns, please do not hesitate to contact me at 202-514-4427.

Sincerely,

ndrew J. Doyle

cc: counsel listed on certificate of service

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, <u>ex rel.</u> JAMES E. RYAN,	)	
Attorney General of the State of Illinois,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Nos. 00-670-DRH,
	)	00-677-DRH (consolidated)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge
	)	

# PARTIES' JOINT MOTION TO STAY SUMMARY JUDGMENT PROCEEDINGS

Defendant, CHEMETCO, INC. ("Chemetco"), and Plaintiffs, UNITED STATES OF

AMERICA ("United States") and STATE OF ILLINOIS ("Illinois"), hereby move the Court to stay
summary judgment proceedings for a period of approximately three months so that the parties can
continue to engage in settlement discussions. The grounds for this motion are as follows:

- 1. In August 2000, the United States and Illinois each filed a complaint, alleging that Chemetco has violated and continues to violate certain environmental laws.
- 2. The parties subsequently engaged in discovery pursuant to scheduling orders from the Court.
- 3. On November 13, 2001, Chemetco filed a voluntary petition under Chapter 7 of the Bankruptcy Code. See In re Chemetco, No. 01-34066 (Bankr. S.D. Ill.)
- 4. On or about February 14, 2002, the United States and Illinois each filed a motion for partial summary judgment, requesting that the Court find Chemetco liable under substantially all of the

claims alleged in the complaints.

- 5. On March 1, 2002, the Court granted the bankruptcy trustee's motion for extension of time (filed or about February 8, 2002), ruling that the Defendant's responses to the motions must be filed no later than the close of business on May 31, 2002.
- 6. Recently, the parties (<u>i.e.</u>, representatives of the bankruptcy trustee and the Plaintiffs) have been engaging in settlement discussions, including discussions about ongoing environmental concerns at the facility.
- 7. These discussions are continuing and may result in narrowing or eliminating issues in this case that require resolution by the Court.
- 8. To conserve the parties' resources and to allow them to focus on settlement discussions rather than litigation, the parties request that the Court not take any action on the United States' and Illinois' motions for partial summary judgment before September 6, 2002.
- 9. Likewise, the parties request that the Court extend the date by which Chemetco must file any responses to the motions for partial summary judgment from May 31 up to and including September 6, 2002.
- 10. Finally, for the same reasons, the Court should also cancel the pre-trial conference that is currently set for April 19, 2002, and the settlement conference that is currently set for May 22, 2002.

WHEREFORE, the parties request that the Court grant this motion for stay; a proposed order is attached.

Dated: 4/18/02 By:

Respectfully submitted,

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Livingston Law Office

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(618) 628-7700

Attorney for Defendant and Bankruptcy Trustee

THOMAS L. SANSONETTI

Assistant Attorney General

Environment and Natural Resources Division

Dated: 4/18/02

By

ANDREW J. DOYLE

U.S. Department of Justice

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Attorneys for Plaintiff United States of America

Dated: 4/18/0 By:

James Morgan/ by AJD

**JAMES MORGAN** 

Senior Assistant Attorney General

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Springfield, Illinois 62706

(217) 524-7506

Attorney for Plaintiff-State of Illinois

### Certificate of Service

I hereby certify that on this 18th day of April, 2002, I caused a true and correct copy of the foregoing PARTIES' JOINT MOTION TO STAY SUMMARY JUDGMENT PROCEEDINGS, as well as the proposed order, on the following counsel:

Patrick M. Flynn 23 Public Square, Suite 440 Belleville, Illinois 62220

Teresa A. Generous Greensfelder, Hemker & Gale, P.C. 10 South Broadway St. Louis, MO 63102-1774

Laura K. Grandy Bankruptcy Trustee 720 West Main St., Suite 100 Belleville, IL 62220

Penni S. Livingston 6001 Old Collinsville Road Building 4 - Suite B Fairview Heights, IL 62208

James L. Morgan Senior Assistant Attorney General Counsel for Plaintiff, State of Illinois 500 South Second Street Springfield, Illinois 62706

ANDRÉW J. DOYLE

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

and PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN,	) )
Attorney General of the State of Illinois,	, )
Plaintiffs,	) )
v.	) Civil Nos. 00-670-DRH, ) 00-677-DRH (consolidated)
CHEMETCO, INC.,	) CJRA Track C
Defendant.	<ul><li>Hon. David R. Herndon</li><li>U.S. District Judge</li></ul>
ODDED CDANTING DAI	RTIES' JOINT MOTION TO
	DGMENT PROCEEDINGS
This cause comes before the Court on the	he parties' Joint Motion to Stay Summary Judgment
Proceedings. For good cause shown, and becar	use the parties are in agreement, it is ordered that the
motion be granted, and Defendant Chemetco,	Inc., shall have up to and including Friday, September
6, 2002, to file responses to Plaintiffs' summar	y judgment motions. The April 19, 2002 pre-trial
conference and the May 22, 2002 settlement co	onference are hereby canceled until further notice.
DONE AND ORDERED in Chambers	s in East St. Louis, Illinois, this day of
, 2002.	
$\overline{\mathbf{D}}$	AVID R. HERNDON
_	nited States District Judge

copies to: counsel of record

Magistrate Judge Cohn's Chambers

U.S. ENVIRONMENTAL PROTECTION AGENCY

APR 23 2002

OFFICE OF REGIONAL COUNSEL

1/29/2000

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

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) Civil No. 00-670-DRH
) (consolidated with 00-677-DRH)
) CJRA Track C
) Hon. David R. Herndon
) U.S. District Judge
)

### UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff United States of America, by and through its attorneys, on behalf of the United States Environmental Protection Agency ("U.S. EPA"), respectfully moves for partial summary judgment pursuant to Fed. R. Civ. P. 56. The United States seeks findings that Defendant Chemetco, Inc. ("Chemetco") has violated and is violating various environmental laws, and that Chemetco is liable for civil penalties and the performance of appropriate injunctive relief to remedy violations and to prevent future violations of the environmental laws at Chemetco's Facility. <sup>1</sup>

On or about August 25, 2001, the United States filed a complaint against Chemetco alleging violations of certain state and federal environmental laws and regulations. Specifically, the complaint alleges

<sup>&</sup>lt;sup>1</sup> On November 13, 2001, Defendant Chemetco filed a voluntary petition for bankruptcy in this judicial district. (No. 01-34066). The continuation of this action is not affected by the automatic stay provisions of the Bankruptcy Code, because it is a "continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." 11 U.S.C. § 362(b)(4). Even though the United States is asking the Court, *inter alia*, to find the Defendant liable for civil penalties, the automatic stay does not bar such a finding because the United States is not engaged in the collection of such penalties. <u>Id.</u>

WHEREFORE, the plaintiff, the United States of America, respectfully requests that this Court

grant this motion and enter partial summary judgment in favor of the plaintiff; a proposed order is attached.

Dated: 1/29/0)

Respectfully submitted,

THOMAS L. SANSONETTI

Assistant Attorney General

Environment and Natural Resources Division

ANDREW J. DOYLE

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### OF COUNSEL:

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JEFFERY M. TREVINO Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, Illinois 60604 (312) 886-6729

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

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)	
)	Civil No. 00-670-DRH (consolidated with 00-677-DRH)
)	CJRA Track C
)	Hon. David R. Herndon
)	U.S. District Judge
)	

# MEMORANDUM AND ORDER GRANTING UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

### **HERNDON**, District Judge:

This cause comes before the Court on Plaintiff United States of America's ("United States") motion for partial summary judgment. In August 2000, the United States filed a 10-count complaint against Defendant Chemetco, Inc. ("Chemetco"), alleging violations of the Clean Water Act ("CWA") and the Resource Conservation and Recovery Act ("RCRA"), including violations of RCRA's federal and state implementing regulations, committed at Chemetco's copper smelting facility in Hardford, Illinois. After Chemetco filed an answer, this Court set a trial date of April 2002 and a dispositive motion deadline of February 14, 2002. Subsequently, in November 2001, Chemetco filed a voluntary petition for Chapter 7 bankruptcy in this district's bankruptcy court. See Inre Chemetco, No. 01-34066 (Bankr. S.D. Ill.).

Presently, the United States seeks summary judgment that Chemetco is liable for civil penalties and injunctive relief under 8 of the complaint's 10 claims. (The Court notes that under 11 U.S.C. § 362(b)(4),

this type of proceeding is excepted from the bankruptcy code's automatic stay. The Court further notes that the United States is voluntarily dismissing two claims, claims one and nine.) In support of its motion, the United States has filed a statement of facts, exhibits, and a memorandum of law. Chemetco [did/did not] file a timely response.

Upon due consideration of these materials, the Court agrees with the United States that no genuine issues of material fact exist, and the Court grants the United States' motion for partial summary judgment.

I.

By reference, the Court incorporates the United States' statement of facts, to which Chemetco has established no triable issue. Summary judgment is proper where, as here, here "the record as a whole" cannot "lead a rational trier of fact to find for the non-moving party," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Roger v. Yellow Freight Sys. Inc.*, 21 F.3d 146, 149 (7th Cir. 1994).

II.

The United States' **Second Claim** for Relief alleges that Chemetco did not timely develop a storm water plan nor comply with other requirements of its 1996 NPDES Permit. U.S. Ex. 1, U.S. Compl. ¶¶ 134-139. The Court finds no genuine issue of material fact on this claim. The evidence is entirely one-sided that Chemetco did not:

- a) develop a storm water pollution prevention plan by November 16, 1996;
- b) implement a storm water pollution prevention plan by May 16, 1997;
- c) conduct an annual facility storm water inspection by May 20, 1997;
- d) submit the results of an annual facility storm water inspection by July 20, 1997;

- e) monitor its progress in implementing its storm water plan; and
- f) verify that all aspects of its plan were accurate.

Accordingly, the Court concludes that Chemetco violated CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, as alleged in claim four of the complaint; and that Chemetco is liable for the payment of civil penalties and appropriate injunctive relief, specifically the preparation and implementation of a Storm Water Pollution Prevention Plan, as required by Chemetco's 1996 NPDES permit.

III.

The **Third Claim** for Relief alleges that Chemetco caused the unpermitted discharge of pollutants, namely cadmium- and lead-bearing slurry, into waters of the United States via the secret 10-inch pipe. Because this issue was litigated in the criminal proceeding, the Court concludes that Chemetco is estopped from denying liability.

"Collateral estoppel 'means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any *future lawsuit*." *United States v. Green*, 735 F.2d 1018, 1027 (7th Cir. 1984) (citing *Ashe v. Swenson*, 397 U.S. 436 (1970)). A criminal conviction can be used as collateral estoppel in a later civil action. *Appley v. West*, 832 F.2d 1021, 1025 (7th Cir. 1987). A conviction is conclusive as to an issue arising against the criminal defendant in a subsequent civil action. *In re Raiford*, 695 F.2d 521, 522 (11th Cir. 1983). Collateral estoppel has four requirements: 1) the issue sought to be precluded must be the same as that involved in the first action; 2) the issue must have been actually litigated; 3) the determination of the issue must have been essential to the final judgment; and 4) the party against whom estoppel is invoked must fully be represented in the first action. *Teamsters Local 282 Pension Trust Fund v. Angelos*, 815 F.2d 452,

456 (7th Cir. 1987). All of these requirements are satisfied here.

Same Issue: Chemetco was charged with knowingly discharging pollutants, including lead, cadmium, and zinc, through the secret pipe into Long Lake and its adjacent wetlands. This is the same violation alleged in the Third Claim for Relief, absent the higher *mens rea* of knowledge.

Actually Litigated: Chemetco was charged with substantive and conspiracy counts of knowingly discharging pollutants without a permit, which is analogous to the Third Claim for Relief. Chemetco stipulated that: 1) from about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, into the unnamed ditch tributary to Long Lake; and 2) Chemetco did not have a permit under the Clean Water Act to discharge pollutants from the secret pipe into the unnamed ditch tributary to Long Lake. As such, the second requirement is satisfied.

Essential Issue: To obtain a criminal conviction of Chemetco, the United States was required to prove, beyond a reasonable doubt, that: 1) the conspiracy charged in Count One of the Indictment to violate the Clean Water Act existed; 2) Defendant knowingly became a member of the conspiracy with an intent to further the conspiracy; and, 3) an overt act was committed by at least one conspirator in furtherance of the conspiracy. See 18 U.S.C. § 371. All of these criminal elements were established. In Count Two of the criminal indictment, the United States asserted that on or about the dates charged, Defendant knowingly discharged, or caused to be discharged a pollutant, that the pollutant was discharged from a point source into a water of the United States; and that the discharge was undertaken without a CWA permit or in violation of a CWA. See 33 U.S.C. §§ 1311 (a), 1319(c)(2)(A). Chemetco pled guilty to Counts One and Two of the Indictment and stipulated to related factual allegations. The Third

Claim for Relief alleges the same facts; but in the civil case there is no need to prove a "knowing" *mens rea* or a conspiracy. Therefore, the issues surrounding the Third Claim for Relief were essential issues in the previous criminal litigation, and the third step is satisfied.

Non-Moving Party Represented: In the criminal case, Chemetco was represented by counsel including James K. Donovan, now a state judge; Bruce N. Cook of Cook, Shevlin, Ysursa, Brauer & Bartholomew, Ltd.; and Thomas L. Orris, then with Armstrong Teasdale LLP. Thus, the fourth and final step is satisfied, and Chemetco is is collaterally estopped from denying liability for the allegations in the Third Claim for Relief, with the result that the United States is entitled to summary judgment on that claim.

Accordingly, the Court concludes that Chemetco is liable for civil penalties and the restoration, at the direction of U.S. EPA, of Long Lake and its unnamed tributary by removing therefrom the pollutants, including toxic pollutants, that Chemetco discharged into Long Lake from the 10-inch Pipe.

IV.

The Court finds that there is no genuine issue of material fact that Chemetco violated the CWA in constructing its parking lot. The elements of the United States' **Fourth Claim** for Relief are that (a) a person (b) discharged (c) a pollutant (d) from a point source (e) into waters of the United States (e) without a permit from the Corps. 33 U.S.C. §§ 1311(a), 1344(a), 1362(7), (12); *e.g., Kelly v. EPA*, 203 F.3d 519, 522 (7th Cir. 2000). Here, the evidence is entirely one-sided that Chemetco, a corporate "person" under the CWA, 33 U.S.C. § 1362(5), filled jurisdictional wetlands without a permit for nearly two decades.

"Waters of the United States," 33 U.S.C. § 1362(7), existed in the area that is now a parking lot. Chemetco built the parking lot on "wetlands." 33 C.F.R. § 328.3(b); 40 C.F.R. § 230.41(a)(1). Those

wetlands are "adjacent" to (i.e., "bordering, contiguous [to], or neighboring," 33 C.F.R. § 328.3(c)) a tributary of the Mississippi River, which is navigable in fact and is used in interstate commerce. 33 C.F.R. § 328.3(a)(1), (2), (5), (7). As the Supreme Court recently reaffirmed, Congress "unequivocal[ly] acquiesce[d] to, and approve[d] of[] the Corps' regulations interpreting the CWA to cover wetlands adjacent to navigable waters." *Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159, 167 (2001) (citation omitted).

Into those adjacent wetlands Chemetco discharged pollutants from point sources. In constructing its parking lot, Chemetco brought about "addition[s]" of, among other things, chunk slag, limestone gravel, and broken concrete, which fall into the CWA's expansive definition of "pollutants." 33 U.S.C. § 1362(6) ("pollutants" include "rock," "sand," and "industrial waste"); id. § 1362(12) (to "discharge" is to "add[]"); id. § 1344(a) (permit needed to discharge "dredged or fill material"). Chemetco used "point source[s]" to bring about its discharges, i.e., "any discernible, confined and discrete conveyance." 33 U.S.C. § 1362(12), (14); e.g., United States v. Huebner, 752 F.2d 1235, 1243 (7th Cir. 1985).

At no time did Chemetco obtain (or for that matter even apply for) the requisite permit from the Corps for its wetland-filling activities. To this day, Chemetco has not removed any of the chunk slag, limestone gravel, broken concrete, or other fill material it discharged into the wetlands. Thus, not only did Chemetco violate the CWA on each and every occasion it discharged, but its violations continue to this day as long as unpermitted fill material remains in place. *See, e.g., Sasser v. EPA*, 990 F.2d 127, 129 (4th Cir. 1993); *United States v. Cumberland Farms of Conn.*, 647 F. Supp. 1166, 1183 (D. Mass. 1986), affd, 826 F.2d 1151 (1st Cir. 1987).

Accordingly, the Court concludes that Chemetco violated and continues to violate 33 U.S.C. §§ 1311(a), 1344(a); and that Chemetco is liable for civil penalties and appropriate injunctive relief—namely, removing the fill and restoring the wetlands to their pre-fill condition and contours. *See* 33 U.S.C. § 1319(b), (d).

V.

The Court finds no genuine issue of material fact on the United States' **Fifth Claim** -- that Chemetco violated U.S. EPA's September 1997 Administrative Order. U.S. EPA issued this order in an attempt to stop and remedy the company's unpermitted filling of wetlands under its parking lot. The CWA provides in pertinent part that "any person who violates any order issued by [U.S. EPA] under [33 U.S.C. § 1319(a)] shall be subject to a civil penalty . . . per day for each violation." 33 U.S.C. § 1319(d). Here, the evidence is not in dispute that U.S. EPA issued an administrative order to Chemetco; the order was issued under authority of 33 U.S.C. § 1319(a); Chemetco received the order; and Chemetco did not comply with the order.

Accordingly, the Court concludes that Chemetco is liable for civil penalties under 33 U.S.C. § 1319(d).

VI.

The Court finds no genuine issue of material fact on the United States' **Sixth Claim**. Chemetco, without obtaining a hazardous waste treatment, storage or disposal permit, stored and/or disposed of RCRA hazardous waste, in the form of lead-hazardous waste refractory brick, pulverized refractory brick and associated gunning material on property owned by Chemetco south of Oldenberg Rd. In doing so, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40

C.F.R. § 270. As a result of its violations of RCRA, Chemetco is subject to, and has failed to comply with the closure requirements of 35 Ill. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 for all areas in which it treated, stored or disposed of lead-hazardous refractory materials.

Accordingly, the Court concludes that Chemetco is liable for civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), to remediate by RCRA closure pursuant to 35 III. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 those areas upon which Defendant stored or disposed of refractory brick, pulverized refractory brick, and gunning material as alleged in the United States' Sixth Claim for Relief.

### VII.

The Court finds no genuine issue of material fact on the United States' **Seventh Claim**. The evidence is entirely one-sided that Chemetco treated, stored, and/or disposed of the cadmium- and lead-contaminated soil (hazardous waste under RCRA) without obtaining a hazardous waste treatment, storage, or disposal permit. In doing so, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40 C.F.R. § 270.

Accordingly, the Court concludes that Chemetco is liable for civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the remediation by RCRA closure pursuant to 35 Ill. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 of those areas upon which Defendant stored or disposed of "cadmium- and lead-contaminated soil" as alleged in the United States' Seventh Claim for Relief.

The Court finds no genuine issue of material fact on the United States' Eighth Claim. Chemetco generated slag from its smelting operations and stored slag at its facility. The slag pile at Chemetco's Facility covers approximately ten acres. Illinois EPA and U.S. EPA have both tested the slag generated by Chemetco and have both determined that the slag fails the Toxicity Characteristic Leaching Procedure for lead. There is no triable issue about this determination. Chemetco does not possess a permit under state or federal regulations to treat, store or dispose of the slag in the slag pile. Chemetco, without obtaining a hazardous waste treatment, storage or disposal permit, stored and or and/or disposed of RCRA hazardous waste, in the form of lead-bearing slag at its Facility. In doing so, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40 C.F.R. § 270.

Accordingly, the Court concludes that Chemetco is liable for civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the remediation by RCRA closure pursuant to 35 Ill. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 of those areas upon which Defendant stored or disposed of lead-bearing slag as alleged in the United States' Eighth Claim for Relief.

IX.

Finally, the Court finds no genuine issue of material fact about the United States' **Tenth Claim** -- that Chemetco is liable for performing, at the direction of U.S. EPA, facility-wide corrective action pursuant to RCRA section 3008(h), 42 U.S.C. § 6928(h), to identify, investigate, and remediate all solid waste management units at its facility.

As originally enacted, RCRA did not require permittees to take significant remedial action to correct past mismanagement of hazardous waste." *American Iron & Steel Inst. v. EPA*, 886 F.2d 390, 393 (D.C. Cir.1989) (citations omitted). Congress amended RCRA with the Hazardous and Solid Waste Amendments of 1984, Pub.L. No. 98-616, 98 Stat. 3221 (1984) ("HSWA") to give the EPA added enforcement power. *See Midlantic Nat. Bank v. New Jersey Dept.*, 106 S.Ct. 755, 762 (1986). One of the more significant HSWA provisions is the interim status corrective action authority of RCRA Section 3008(h), 42 U.S.C. § 6928(h). This provision gives U.S. EPA the authority to take enforcement actions to compel response measures when EPA determines that there is or has been a release of hazardous waste or hazardous waste constituents at a RCRA interim status facility (such as Chemetco's). Section 3008(h) gives U.S. EPA the ability to ensure that RCRA facility owners and operators correct releases at their facilities that may pose a threat to human health and the environment.

RCRA provides for the hazardous waste management program to be administered initially by the Administrator of EPA. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may authorize an individual state to administer the RCRA hazardous waste management program in lieu of the federal program when he deems the state program to be substantially equivalent. U.S. EPA has authorized Illinois to administer its hazardous waste management program in lieu of the pre-HSWA provisions of the federal program. However, enforcement of the provisions of the HSWA amendments, including the

<sup>&</sup>lt;sup>3</sup> RCRA section 3008(h)(1), 42 U.S.C. 6928(h)(1), provides:

Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under [42 U.S.C. § 6925(e)], the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court.

enforcement provision set forth at Section 3008(h), has not been delegated to Illinois, and U.S. EPA directly enforces HSWA provisions and implementing regulations in that state.

RCRA Section 3008(a) provides two mechanisms for federal enforcement of RCRA statutory and regulatory requirements. First, EPA may issue an administrative order assessing a civil penalty, requiring compliance, or both. Section 3008(a) also authorizes EPA to commence an action in federal district court for appropriate relief, including permanent injunctive relief.

There is no triable issue that corrective action is warranted at Chemetco's Facility. First, Chemetco itself stipulated in the criminal action that from the time of the secret pipe's installation in 1986 until September 18, 1996, the pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and other pollutants, from the Chemetco plant site into the unnamed ditch tributary to Long Lake. Analytical data resulting from application of the Toxicity Characteristic Leaching Procedure to the samples of the gray sediment taken on September 18, 1996 indicated that the sediment being discharged from the pipe contained concentrations of lead and cadmium equal to or in excess of those substances' respective toxicity concentration levels of 5.0 mg/l and 1.0 mg/l. Although Chemetco undertook a limited cleanup of that portion of Long Lake to which it discharged the sediment, additional remediation is required.

Next, Chemetco's ten-acre slag pile has been determined by both Illinois EPA and U.S EPA to contain lead at levels that exceed its regulatory threshold of 5.0 mg/L. Third, residual contamination remains in the area in which Chemetco stored its lead-hazardous refractory bricks, pulverized refractory brick, and gunning material. Finally, there has been a release of hazardous wastes into the environment from Chemetco's facility, as U.S. EPA has undisputably found.

Accordingly, the Court concludes that Chemetco is liable for the performance of facility-wide corrective action under RCRA section 3008(h), as alleged in the United States' Tenth Claim for Relief.

\* \* \*

For the foregoing reasons, the United States' motion for partial summary judgment is granted.

DONE AND ORDERED in Chambers in East St. Louis, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_\_,

2002.

DAVID R. HERNDON
UNITED STATES DISTRICT JUDGE

copies to: counsel of record

Laura Grandy, Bankruptcy Trustee

### **CERTIFICATE OF SERVICE**

The undersigned counsel for Plaintiff United States of America hereby certifies that on January 2002, I caused the foregoing United States' Motion for Partial Summary Judgment (with attached proposed memorandum and order) and Memorandum of Law in Support, to be served via federal express on the following opposing counsel of record and bankruptcy trustee and debtor attorney:

George M. von Stamwitz, Esq.
John Cowling, Esq.
Armstrong Teasdale
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Teresa A. Generous 10 S. Broadway St. Louis, MO 63102-1774 314-241-9090

ATTORNEY FOR THE UNITED STATES

1/59/002

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois,	) ) )
Plaintiffs,	) . ,
V.	) Civil No. 00-670-DRH ) (consolidated with 00-677-DRH)
CHEMETCO, INC.,	) CJRA Track C
Defendant.	) Hon. David R. Herndon ) U.S. District Judge )

### AFFIDAVIT OF CHRISTOPHER CAHNOVSKY

Christopher Cahnovsky, upon oath, state as follows:

- I am employed by the Illinois Environmental Protection Agency as a Senior Public Service Administrator, working out of the Field Operations Section, Bureau of Land, at the Collinsville Regional Office.
- 2. My duties include conducting inspections at facilities that generate, store, treat, and/or dispose of hazardous waste to determine their compliance with the Resource Recovery Act, the Illinois Environmental Protection Act, and regulations promulgated thereunder. This includes conducting inspections of the Chemetco, Inc., facility in Hartford, Illinois.
- 3. I have conducted inspections of the Chemetco facility on the following dates: September 18, 1996, September 19, 1996, September 21, 1996, September 24, 1996, October 7, 1996, October 15, 1996, October 16, 1996, October 17, 1996, October 24, 1996, November 8, 1996, November 27, 1996, April 7, 1997, April 8, 1997, April 14, 1997, April 16, 1997, April 21, 1997, April 25, 1997, May 20, 1997, June 4,

1997, June 12, 1997, July 7, 1997, July 25, 1997, September 4, 1997, September 9, 1997, October 21, 1997, December 16, 1997, October 22, 1998, April 16, 1999, June 24, 1999, October 22, 1999, February 4, 2000, May 5, 2000, May 8, 2000, May 17, 2000, June 7, 2000, November 17, 2000, November 21, 2000, December 27, 2000, January 5, 2001, February 7, 2001, February 23, 2001, March 13, 2001, July 11, 2001, July 19, 2001, October 30, 2001, November 1, 2001, December 3, 2001 and December 13, 2001.

- 4. Attached hereto are true and correct copies of the reports of the following inspections of the Chemetco facility.
  - a. October 10, 1996 memo for the October 7, 1996 inspection;
  - b. October 30, 1996 memo for the October 15, 16 and 17 1996 inspections;
  - c. November 4, 1996 memo for the October 24, 1996 inspection;
  - d. November 26, 1996 memo for the November 8, 1996 inspection;
  - e. April 7, 1997;
  - f. April 8, 1997;
  - g. April 14, 1997;
  - h. May 6, 1997 memo for the April 25, 1997 inspecion;
  - i. June 12, 1997;
  - j. January 5, 1998 memo for the December 16, 1997 inspection; and
  - k. October 22, 1999.

I prepared each inspection report at or near the time of the inspection in the ordinary course of my duties as an inspector and they have been kept in the ordinary course of the Illinois EPA's business since that time. The inspection reports include additional documents I relied on or gathered during the course of the inspection including photographs taken during those inspections. The photographs attached to the reports dated <a href="https://example.com/nearth-sections/">(no photographs attached)</a>, truly and accurately portray the conditions at the facility as they existed when the photographs were taken.

5. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters stated to be on information and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER DECLARANT SAYETH NOT.

Christopher Cahnovsky

Subscribed and sworn to before me this 25th day of January, 2002

**NOTARY PUBLIC** 

"OFFICIAL SEAL"
Paula Ottensmeier
Notary Public, State of Illinois
My Commission Expires

11/9/03





### U.S. Department of Justice

### Environment and Natural Resources Division

Gregory L. Sukys **Environmental Enforcement Section** P.O. Box 7611 Washington, DC 20044-7611

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January 29, 2002

### **VIA FEDEX**

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Teresa A. Generous 10 S. Broadway St. Louis, MO 63102-1774 314-241-9090

Re: United States, et al. v. Chemetco, Inc., No. 00-CV-670-DRH (S.D. III.)

#### Dear Counsel:

Enclosed please find copies of the United States' Motion for Partial Summary Judgment (with proposed order), Memorandum of Law in Support, Statement of Facts, and Exhibits. Pursuant to Local Rule 7.1, Chemetco has until February 11 to serve any responsive documents on us (preferably by express courier service or facsimile) in time for us to file the motion package on February 14, 2002. Please notice that attached to U.S. Ex. 9 (the Declaration of Patrick Kuefler) are documents in an envelope marked "confidential business information." We will propose a motion to you shortly (for your concurrence or objection) a motion dealing with Chemetco's previous claim of CBI to these documents.

Also, pursuant to Local Rule 7.1(c), we will be proposing (for your concurrence or objection) a motion to exceed the page limitations by approximately 9 pages for our memorandum of law.

Should you have any questions, or desire to discuss any aspects of the civil action against Chemetco, please call either of us at the numbers set forth above.

Sincerely,

Gregory L. Sukys Andrew J. Doyle

Enclosure

cc: EPA counsel

State of Illinois counsel

1/39/2002

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, ex rel. JAMES E. RYAN,	)	
Attorney General of the State of Illinois,	)	
Plaintiffs,	)	
v.	)	Civil No. 00-670-DRH (consolidated with 00-677-DRH)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge
	)	

# MEMORANDUM OF LAW IN SUPPORT OF THE UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

The United States of America submits this memorandum of law in support of its Motion for Partial Summary Judgment, pursuant to Fed. R. Civ. P. 56, as to the United States' Second, Third, Fourth and Fifth (under the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251-1387), and the United States' Sixth, Seventh, Eighth, and Tenth Claims for Relief (under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k).

### A. Summary Judgment Standard

In affirming the entry of summary judgment in a recent environmental case, the Seventh Circuit reviewed the governing standard:

Summary judgment is appropriate if 'there is no genuine issue as to any material fact... and the moving party is entitled to judgment as a matter of law.' Fed. R. Civ. P. 56(c). To ward off summary judgment by showing that there is genuine doubt on a material fact, the non-moving party must do more than raise a 'metaphysical doubt' as to the fact's existence. Gleason v. Mesirow Fin., Inc.,

<sup>&</sup>lt;sup>y</sup> Please see U.S. Complaint, U.S. Ex. 1, for discussions of the relevant statutory and regulatory provisions of the Clean Water Act and the Resource Conservation and Recovery Act.

118 F.3d 1134, 1139 (7th Cir. 1997). The evidence must be 'such that a reasonable jury could return a verdict for the nonmoving party.' *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). 'If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.' *Id.* at 249-50, 106 S.Ct. 2505 (internal citations omitted).

NutraSweet Co. v. X-L Eng'g Corp., 227 F.3d 776, 784-85 (7th Cir. 2000).

Partial summary judgment is proper here because "the record as a whole" cannot "lead a rational trier of fact to find for the non-moving party," *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Roger v. Yellow Freight Sys. Inc.*, 21 F.3d 146, 149 (7th Cir. 1994).

### B. Argument - The United States is Entitled to Partial Summary Judgment

### 1. Second Claim for Relief - Violations of 1996 NPDES Permit

CWA Section 402, 33 U.S.C. § 1342, authorizes the U.S. EPA Administrator, or a state authorized to carry out the National Pollution Discharge Elimination System ("NPDES") program, to issue NPDES permits for the discharge of pollutants upon condition that such discharge will meet certain specific requirements of the CWA and such other conditions as the U.S. EPA Administrator determines are necessary to carry out the provisions of the CWA. The State of Illinois is authorized by the U.S. EPA Administrator pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer an NPDES permit program. CWA Section 309(a), (b), 33 U.S.C. 1319(a), (b), authorizes the Administrator of U.S. EPA to commence a civil action for penalties and injunctive to enforce "any condition or limitation . . . in a permit issued by a State . . . under [33 U.S.C. § 1342]."

The United States Second Claim for Relief alleges that Chemetco did not timely develop a storm water plan nor comply with other requirements of a 1996 NPDES Permit issued by Illinois. U.S. Ex. 1, U.S. Compl. ¶ 134-139. As attested to by U.S. EPA inspector John

McGuire and William Tong, and as admitted by Chemetco itself, Chemetco failed to comply with the requirements of the 1996 NPDES permit. In particular, Chemetco did not:

- a) develop a storm water pollution prevention plan by November 16, 1996;
- b) implement a storm water pollution prevention plan by May 16, 1997;
- c) conduct an annual facility storm water inspection by May 20, 1997;
- d) submit the results of an annual facility storm water inspection by July 20, 1997:
  - e) monitor its progress in implementing its storm water plan; and
  - f) verify that all aspects of its plan were accurate.

### U.S. SOF ¶ 13.

Because there is no genuine issue of material fact that Chemetco failed to meet the requirements of its 1996 NPDES permit, the Court should find that Chemetco violated CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, as alleged in the United States' Fourth Claim for Relief, and that Chemetco is liable for the payment of civil penalties and appropriate injunctive relief, specifically the preparation and implementation of a Storm Water Pollution Prevention Plan, as required by Chemetco's 1996 NPDES permit.

### 2. Third Claim for Relief - Unpermitted Discharge of Pollutants into Water

The Third Claim for Relief alleges that Chemetco caused the unpermitted discharge of pollutants, namely cadmium- and lead-bearing slurry, into waters of the United States via the secret 10-inch pipe. Because this issue was litigated in the criminal proceeding, Chemetco is estopped from denying liability.

"Collateral estoppel 'means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." United States v. Green, 735 F.2d 1018, 1027 (7th Cir. 1984)

(citing *Ashe v. Swenson*, 397 U.S. 436 (1970)). A criminal conviction can be used as collateral estoppel in a later civil action. *Appley v. West*, 832 F.2d 1021, 1025 (7th Cir. 1987). A conviction is conclusive as to an issue arising against the criminal defendant in a subsequent civil action. *In re Raiford*, 695 F.2d 521, 522 (11th Cir. 1983). Collateral estoppel has four requirements: 1) the issue sought to be precluded must be the same as that involved in the first action; 2) the issue must have been actually litigated; 3) the determination of the issue must have been essential to the final judgment; and 4) the party against whom estoppel is invoked must fully be represented in the first action. *Teamsters Local 282 Pension Trust Fund v. Angelos*, 815 F.2d 452, 456 (7th Cir. 1987). All of these requirements are satisfied here.

Same Issue: Chemetco was charged with knowingly discharging pollutants, including lead, cadmium, and zinc, through the secret pipe into Long Lake and its adjacent wetlands. U.S. SOF ¶ 19. This is the same violation alleged in the Third Claim for Relief, absent the higher mens rea of knowledge.

Actually Litigated: Chemetco was charged with substantive and conspiracy counts of knowingly discharging pollutants without an NPDES permit, which is analogous to the Third Claim for Relief. Chemetco stipulated that: 1) from about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, into the unnamed ditch tributary to Long Lake (U.S. SOF ¶ 23.a); and 2) Chemetco did not have a permit under the Clean Water Act to discharge pollutants from the secret pipe into the unnamed ditch tributary to Long Lake. U.S. SOF ¶ 23.f. As such, the second requirement is satisfied.

Essential Issue: To obtain a criminal conviction of Chemetco, the United States was required to prove, beyond a reasonable doubt, that: 1) the conspiracy charged in Count One of the Indictment to violate the Clean Water Act existed; 2) Defendant knowingly became a

member of the conspiracy with an intent to further the conspiracy; and, 3) an overt act was committed by at least one conspirator in furtherance of the conspiracy. See 18 U.S.C. § 371. All of these criminal elements were established. In Count Two of the criminal indictment, the United States asserted that on or about the dates charged, Defendant knowingly discharged, or caused to be discharged a pollutant, that the pollutant was discharged from a point source into a water of the United States; and that the discharge was undertaken without a CWA permit or in violation of a CWA. See 33 U.S.C. §§ 1311 (a), 1319(c)(2)(A). Chemetco pled guilty to Counts One and Two of the Indictment and stipulated to related factual allegations. U.S. SOF ¶¶ 22-23. The Third Claim for Relief alleges the same facts; but in the civil case there is no need to prove a "knowing" mens rea or a conspiracy. Therefore, the issues surrounding the Third Claim for Relief were essential issues in the previous criminal litigation, and the third step is satisfied.

Non-Moving Party Represented: In the criminal case, Chemetco was represented by counsel including James K. Donovan, now a state judge; Bruce N. Cook of Cook, Shevlin, Ysursa, Brauer & Bartholomew, Ltd.; and Thomas L. Orris, then with Armstrong Teasdale LLP. Thus, the fourth and final step is satisfied.

Because Chemetco is collaterally estopped from denying liability for the allegations in the Third Claim for Relief, the United States is entitled to summary judgment. The Court should find that Chemetco, is liable for civil penalties and the restoration, at the direction of U.S. EPA, of Long Lake and its unnamed tributary by removing therefrom the pollutants, including toxic pollutants, that Chemetco discharged into Long Lake from the 10-inch Pipe.

### 3. Fourth Claim for Relief - Unpermitted Filling of Wetlands

No genuine issue of material fact exists that Chemetco violated the Clean Water Act in constructing its parking lot. Under this claim, to establish Chemetco's liability for injunctive relief and civil penalties, the United States must show that (a) a person (b) discharged (c) a

pollutant (d) from a point source (e) into waters of the United States (e) without a permit from the Corps. 33 U.S.C.

§§ 1311(a), 1344(a), 1362(7), (12); e.g., Kelly v. EPA, 203 F.3d 519, 522 (7th Cir. 2000). Here, the evidence is entirely one-sided that Chemetco, a corporate "person" under the CWA, 33 U.S.C. § 1362(5), filled jurisdictional wetlands without a permit for nearly two decades.

First, "waters of the United States," 33 U.S.C. § 1362(7), existed in the area that is now a parking lot. Specifically, Chemetco built the parking lot on "wetlands." 33 C.F.R. § 328.3(b); 40 C.F.R. § 230.41(a)(1). See U.S. SOF ¶ 27, 28, 38. Those wetlands are "adjacent" to (i.e., "bordering, contiguous [to], or neighboring," 33 C.F.R. § 328.3(c)) a tributary of the Mississippi River, which is navigable in fact and is used in interstate commerce. 33 C.F.R. § 328.3(a)(1), (2), (5), (7). See U.S. SOF ¶ 42-45. As the Supreme Court recently reaffirmed, Congress "unequivocal[ly] acquiesce[d] to, and approve[d] of[] the Corps' regulations interpreting the CWA to cover wetlands adjacent to navigable waters." *Solid Waste Agency of N. Cook County v. United States Army Corps of Eng'rs*, 531 U.S. 159, 167 (2001) (citation omitted).

Into those adjacent wetlands Chemetco discharged pollutants from point sources. That is, in constructing its parking lot, Chemetco brought about "addition[s]" of, among other things, chunk slag, limestone gravel, and broken concrete, which fall into the CWA's expansive definition of "pollutants." 33 U.S.C. § 1362(6) ("pollutants" include "rock," "sand," and "industrial waste"); id. § 1362(12) (to "discharge" is to "add[]"); id. § 1344(a) (permit needed to discharge "dredged or fill material"). See U.S. SOF ¶ 29-32, 34-36, 39. Indeed, it is estimated that approximately 93,000 cubic yards of pollutants exist. U.S. SOF ¶ 41. Chemetco used "point source[s]" to bring about its discharges, i.e., "any discernible, confined and discrete conveyance." 33 U.S.C. § 1362(12), (14); e.g., United States v. Huebner, 752 F.2d 1235, 1243 (7th Cir. 1985) (earth-moving equipment found to be a "point source"). See U.S. SOF ¶ 32-34, 37.

Lastly, at no time did Chemetco obtain (or for that matter even apply for) the requisite permit from the Corps for its wetland-filling activities. U.S. SOF ¶¶ 46-47. Nor has Chemetco removed any of the chunk slag, limestone gravel, broken concrete, or other fill material it discharged into the wetlands. Id. ¶¶ 54-55. Thus, not only did Chemetco violate the CWA on each and every occasion it discharged, but its violations continue to this day as long as unpermitted fill material remains in place. See, e.g., Sasser v. EPA, 990 F.2d 127, 129 (4th Cir. 1993); United States v. Cumberland Farms of Conn., 647 F. Supp. 1166, 1183 (D. Mass. 1986), affd, 826 F.2d 1151 (1st Cir. 1987).

Accordingly, because there is no genuine issue of material fact, the Court should find that Chemetco violated and continues to violate CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a), 1344(a), as alleged in claim four of the complaint; and that Chemetco is liable for appropriate injunctive relief – namely, removing the fill and restoring the wetlands to their pre-fill condition and contours – and civil penalties. *See* 33 U.S.C. § 1319(b), (d).

### 4. Fifth Claim for Relief - Failure to Comply with Administrative Order

No genuine issue of material fact exists that Chemetco violated U.S. EPA's September 1997 Administrative Order, which the Agency issued in an attempt to stop and remedy the company's unpermitted filling of wetlands. The CWA provides in pertinent part that "any person who violates any order issued by [U.S. EPA] under [33 U.S.C. § 1319(a)] shall be subject to a civil penalty . . . per day for each violation." 33 U.S.C. § 1319(d). Here, the evidence is not in dispute that U.S. EPA issued an administrative order to Chemetco; the order was issued under authority of 33 U.S.C. § 1319(a); Chemetco received the order; and Chemetco did not comply with the order. See U.S. SOF ¶¶ 48-53; U.S. Ex. 1, U.S. Compl., Ex. C, at cover letter and 5. Accordingly, the Court should find Chemetco liable for civil penalties under 33 U.S.C. § 1319(d) as alleged in claim five of the complaint.

# 5. Sixth, Seventh and Eighth Claims for Relief - Unpermited Storage and/or Disposal of RCRA Hazardous Waste

RCRA, as amended by the 1984 Hazardous and Solid Waste Amendments (HSWA), establishes a comprehensive federal regulatory program for the management of hazardous waste. 42 U.S.C. § 6921 et seq. Congress intended that RCRA address the problems posed by the management of hazardous waste and "minimize the present and future threat to human health and the environment." 42 U.S.C. § 6902(b); see United States v. Production Plated Plastics, Inc. ("PPP I"), 742 F. Supp. 956, 960 (W.D. Mich. 1990), aff'd 955 F.2d 45 (6th Cir.), cert. denied, 113 S.Ct. 67 (1992). RCRA establishes a "cradle-to-grave" regulatory framework that regulates hazardous waste from its initial generation to its ultimate disposal. 42 U.S.C. § 6925(a); see Northside Sanitary Landfill, Inc. v. Thomas, 804 F.2d 371 (7th Cir. 1986) (providing overview of RCRA).

The treatment, storage, or disposal of hazardous waste requires a RCRA permit. RCRA Section 3005(a), 42 U.S.C. § 6925(a). *United States v. Heuer*, 4 F.3d 723, 730 (9th Cir. 1993), cert. denied 510 US 1164 (1994)("an entity which performs a hazardous waste activity for which a permit is required under RCRA may not legally perform that activity unless it has a permit for the relevant activity"). Such permits are issued only after a determination that a facility which treats, stores or disposes of hazardous waste is in compliance with applicable technical standards, 42 U.S.C. § 6924, and hazardous waste permit requirements. 42 U.S.C. § 6925. However, when Congress enacted RCRA, it recognized that a comprehensive permit system for all hazardous waste management facilities could not be instituted all at once. Thus, Congress allowed certain existing facilities that treated, stored or disposed of hazardous wastes to continue

their operations under a condition known as "interim status," which could be maintained during the pendency of permit applications. To qualify for such interim status, a facility had to demonstrate that: 1) it was in existence on November 19, 1980; 2) had complied with Section 3010(a) of RCRA concerning notification of hazardous waste activity; and 3) had made an application for a permit, Section 3005(e) of RCRA, 42 U.S.C. § 6925(e). The owner or operator of a facility with interim status must also comply with 40 C.F.R. Part 265 or equivalent state regulations. These regulations establish standards governing the treatment, storage, or disposal of hazardous waste. RCRA regulations at 40 C.F.R. § 265.1(b) provide that hazardous waste management facilities that fail to take steps necessary to obtain interim status are nonetheless subject to the regulations of 40 C.F.R. Part 265.

Section 3006 of RCRA, 42 U.S.C. § 6926, provides that a State may obtain federal authorization to administer the RCRA hazardous waste management program in that State.

Where a State hazardous waste management program is authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of that authorized State program are effective *in lieu* of the federal hazardous waste management program set forth in 40 C.F.R. Parts 261-271. U.S. EPA granted the State of Illinois interim authorization on May 17, 1982, and final authorization effective January 31, 1986, to operate a portion of the hazardous waste program within the State of Illinois. 51 Fed. Reg. 3778 (January 30, 1986) (codified at 40 C.F.R. § 272.700). This authorization gave Illinois responsibility for, among other things, issuing permits for treatment, storage, and disposal facilities within its borders. The State of Illinois administers

<sup>&</sup>lt;sup>2</sup>Chemetco's smelter is an "interim status" facility. U.S. SOF ¶ 6.

its hazardous waste management program through IEPA.

# a. Sixth Claim for Relief - Unpermited Storage and/or Disposal of RCRA Hazardous Refractory Brick, etc.

On September 18, 1996, government representatives discovered that Chemetco had deposited waste lead- and cadmium contaminated refractory brick, pulverized refractory brick, and gunning material ("refractory materials") on the ground on property owned by Chemetco south of Oldenburg Road. U.S. SOF, ¶ 60-62. Storage of the waste refractory brick on the ground contaminated the underlying soil. U.S. SOF, ¶ 63. The bulk of the refractory materials were removed during 2000, however residual contamination remains and further remediation is required to address the residual contamination. U.S. SOF, ¶¶ 67-68.

Used refractory brick and gunning material are "spent materials" as defined in 35 Ill. Adm. Code 721.101/40 C.F.R. § 261.1(c). Spent materials are "solid wastes" as defined in 35 Ill. Adm. Code 721.102/40C.F.R. § 261.2 (Table 1). Under Ill. Adm. Code 721.102(c)(1)(A), materials are solid wastes if they are accumulated, stored or treated in a manner constituting disposal before being recycled. *See* Appendix Z: Table to Ill. Adm. Code 721.102. The refractory material is a solid waste because it was abandoned by being disposed. Thus, the refractory materials that Chemetco stored on the ground in waste piles are solid waste.

Analytical data resulting from the application of the Toxicity Characteristic Leaching Procedure to the samples of refractory brick, pulverized refractory brick, and gunning material taken on April 21, 1997 indicated that those materials contained concentrations of lead equal to or in excess of that substance's toxicity characteristic level of 5.0 mg/l, subjecting those materials to regulation as hazardous wastes under 35 Ill. Adm. Code 724.124/40 C.F.R. § 261.24. U.S.

SOF ¶ 61.

Chemetco did not possess a permit to store the waste refractory materials on the ground.

U.S. SOF, ¶ 65.

No genuine issue of material fact exists that Chemetco, without obtaining a hazardous waste treatment, storage or disposal permit, stored and or and/or disposed of RCRA hazardous waste, in the form of lead-hazardous waste refractory brick, pulverized refractory brick and associated gunning material on property owned by Chemetco south of Oldenberg Rd. As such, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40 C.F.R. § 270. See United States v. Indiana Woodtreating Corp., 686 F. Supp. 218, 221-24 (S.D. Ind. 1988) (Owner/ operator of woodtreating facility managing hazardous wastes in piles and impoundments who did not obtain a permit or interim status found to violate all applicable RCRA requirements); United States v. Power Engineering Co., 10 F. Supp.2d 1145, 1149 (D. Colo. 1998)(Metal finisher managing hazardous waste found liable under all applicable RCRA requirements for failure to obtain permits or interim status); United States v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1204 (N.D. Ind. 1989)("A land disposal facility that has neither interim status nor a final permit may not operate." citing Vineland Chemical Co. v. U.S. EPA, 810 F.2d 402 (3d Cir. 1987).

As a result of its violations of RCRA, Chemetco is subject to, and has failed to comply with the closure requirements of 35 Ill. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 for all areas in which it treated, stored or disposed of lead-hazardous refractory materials.

Accordingly, the Court should find Chemetco liable for the payment civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C.

§ 6928(a), the remediation by RCRA closure under pursuant to 35 III. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 those areas upon which Defendant stored or disposed of refractory brick, pulverized refractory brick, and gunning material as alleged in the United States' Sixth Claim for Relief.

# b. Seventh Claim for Relief - Unpermitted Storage and/or Disposal of "Cadmium-and Lead- Contaminated soil"

On September 18, 1996, representatives of U.S. EPA and IEPA conducted an inspection of the Chemetco Facility to assess Chemetco's compliance with RCRA, during which the inspectors observed a gray sediment being discharged or released from a secret pipe which measured approximately 10 inches in diameter at the point of discharge on Chemetco's property into an unnamed tributary of Long Lake. U.S. SOF ¶ 69-70. Analytical data resulting from application of the Toxicity Characteristic Leaching Procedure to the samples of the gray sediment taken on September 18, 1996 indicated that the sediment contained concentrations of lead and cadmium equal to or in excess of those substances' respective toxicity concentration levels of 5.0 mg/l and 1.0 mg/l. U.S. SOF, ¶ 71-72. Chemetco stipulated to the presence of lead and cadmium in the substance discharged from the pipe. U.S. SOF ¶ 73.

On or about September 21, 1996, at Chemetco's request, the U.S. Army Corps of Engineers issued to Chemetco, pursuant to CWA Section 404, and subject to certain specified conditions, a one-year emergency authorization to divert the course of, and dam up, Long Lake as part of Chemetco's effort to consolidate, contain and remove from Long Lake and its unnamed tributary the cadmium- and lead-bearing slurry that had been discharged or released from the secret pipe. U.S. SOF ¶ 74.

As part of the consolidation, containment and removal effort conducted by Chemetco, Chemetco constructed one or more impoundment dams on, created one or more containment cells within, and diverted and/or drained a portion of, Long Lake. U.S. SOF ¶ 75.

Prior to October 10, 1996, Chemetco, as part of its consolidation, containment, and removal effort, completed construction of four unlined temporary holding cells or impoundments adjacent to Long Lake. U.S. SOF ¶ 76.3

Containment Area No. 1 comprised the area where the secret pipe was located and the zinc oxide was discharged. Zinc oxide contaminated trees and vegetation were removed from Containment Area No. 1 and placed in Containment No. 4. Containment Area No. 2 held water from Containment Areas No. 1, 3, and 4. *Id.*, at 2-3. The cadmium- and lead-bearing slurry and associated debris that had been excavated from Long Lake was deposited into Containment Area No. 3 but was moved to Containment Area No. 1. U.S. SOF ¶¶ 77-78. The United States' Complaint refers to all of the cadmium- and lead-bearing slurry and the associated debris in Containment Area No. 1 collectively as "cadmium- and lead-contaminated soil." U.S. SOF ¶ 79.

After the cadmium- and lead-bearing slurry and associated debris was moved from Containment Area No. 3 to Containment Area No. 1, concentrations of TCLP metals equal to or in excess of 5.0 mg/l remained in Containment Area No. 3. U.S. SOF, ¶ 80.

Chemetco treated, stored, and/or disposed of the "cadmium- and lead-contaminated

<sup>&</sup>lt;sup>3</sup>United States v. Allegan Metal Finishing Company, 696 F. Supp. 275, 285 (W.D. Mich. 1988)(On-site holding ponds into which defendant discharged metal finishing wastewaters were surface impoundments and land disposal facilities under RCRA); United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. 314, 320 (D.S.C. 1988)(Surface impoundment into which defendant discharged electroplating wastes was a land disposal facility under RCRA).

soil" without obtaining a hazardous waste treatment, storage, or disposal permit. U.S. SOF, ¶ 83.

No genuine issue of material fact exists that Chemetco, without obtaining a hazardous waste treatment, storage or disposal permit, stored and or and/or disposed of RCRA hazardous waste, in the form of "cadmium- and lead-contaminated soil" on property owned by Chemetco south of Oldenberg Rd. As such, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40 C.F.R. § 270.

Accordingly, the Court should find Chemetco liable for the payment civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the remediation by RCRA closure under pursuant to 35 Ill. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 of those areas upon which Defendant stored or disposed of "cadmium- and lead-contaminated soil" as alleged in the United States' Seventh Claim for Relief.

7. Eighth Claim for Relief - Unpermitted Storage and Disposal of Lead-Bearing Slag

Chemetco generated slag from its smelting operations and stored slag at its Facility.

U.S. SOF, ¶84. The slag pile at Chemetco's Facility covers approximately ten acres. U.S.

SOF, ¶85. Illinois EPA and U.S. EPA have both tested the slag generated by Chemetco and have both determined that the slag fails the Toxicity Characteristic Leaching Procedure for lead.

U.S. SOF, ¶86. ⁴

<sup>&</sup>lt;sup>4</sup>In determining whether a waste is a hazardous waste under RCRA, courts are not limited to scientific evidence, such as sampling data, but may also rely on other non-scientific, circumstantial evidence. United States v. Self, 2 F.3d 1071, 1086 (10th Cir. 1992) citing United States v. Baytank, Inc., 934 F.2d 599, 614 (5th Cir. 1991) (holding that to establish criminal liability under RCRA, United States not required to prove wastes were hazardous through test data, but could prove they are hazardous through witness testimony and company records); accord Commercial Oil Service, Inc., 88 B.R. 126,127-128 (N.D. Ohio 1987) (evidence including inspectors' observations at site, statement from corporate principle

Chemetco does not possess a permit under state or federal regulations to treat, store or dispose of the lead-bearing slag in the Slag Pile. U.S. SOF, ¶ 87.

No genuine issue of material fact exists that Chemetco, without obtaining a hazardous waste treatment, storage or disposal permit, stored and or and/or disposed of RCRA hazardous waste, in the form of lead-bearing slag at its Facility. As such, Chemetco violated RCRA section 3005(a), 42 U.S.C. § 6925(a) and 35 Ill. Adm. Code 703.121/40 C.F.R. § 270.

Accordingly, the Court should find Chemetco liable for the payment civil penalties under RCRA Section 3008(g), 42 U.S.C. § 6928(g), and, pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), the remediation by RCRA closure under pursuant to 35 III. Adm. Code Part 725, Subpart G/40 C.F.R. Part 265 of those areas upon which Defendant stored or disposed of lead-bearing slag as alleged in the United States' Eighth Claim for Relief.

### 8. Tenth Claim for Relief - Corrective Action Under RCRA

As enacted, the Resource Conservation and Recovery Act of 1976 ("RCRA") did not require permittees to take significant remedial action to correct past mismanagement of hazardous waste." *American Iron & Steel Inst. v. EPA*, 886 F.2d 390, 393 (D.C. Cir.1989) (citations omitted). Congress amended RCRA with the Hazardous and Solid Waste Amendments of 1984, Pub.L. No. 98-616, 98 Stat. 3221 (1984) ("HSWA) to give the EPA added enforcement power. *See Midlantic Nat. Bank v. New Jersey Dept.*, 106 S.Ct. 755, 762 (1986). One of the more significant HSWA provisions is the interim status corrective action authority of

that storage tank contained chlorinated solvents and hazardous waste facility permit application signed by authorized representative of corporation admitting corporation stored and disposed of large quantities of hazardous wastes at site, was sufficient to establish existence of hazardous waste at facility).

RCRA Section 3008(h), 42 U.S.C. § 6928(h), which authorizes U.S. EPA to take enforcement actions to compel response measures when EPA determines that there is or has been a release of hazardous waste or hazardous waste constituents at a RCRA interim status facility. Section 3008(h) gives U.S. EPA the ability to ensure that RCRA facility owners and operators correct releases at their facilities that may pose a threat to human health and the environment. §

RCRA Section 3008(a) provides two mechanisms for federal enforcement of RCRA statutory and regulatory requirements. First, EPA may issue an administrative order assessing a civil penalty, requiring compliance, or both. Section 3008(a) also authorizes EPA to commence an action in federal district court for appropriate relief, including permanent injunctive relief.

There is no question that corrective action is warranted at Chemetco's Facility. First, Chemetco itself stipulated in the criminal action that from the time of the secret pipe's installation in 1986 until September 18, 1996, the pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and other pollutants, from the Chemetco plant site into the unnamed ditch tributary to Long Lake. U.S. SOF ¶ 23.c, i.

Analytical data resulting from application of the Toxicity Characteristic Leaching Procedure to the samples of the gray sediment taken on September 18, 1996 indicated that the sediment being discharged from the pipe contained concentrations of lead and cadmium equal to or in excess of those substances' respective toxicity concentration levels of 5.0 mg/l and 1.0 mg/l. U.S. SOF ¶ 17. Although Chemetco undertook a limited cleanup of that portion of Long Lake to which it

<sup>&</sup>lt;sup>3</sup> Although U.S. EPA has authorized Illinois to implement a hazardous waste management program under RCRA, enforcement of certain provisions of the HSWA amendments, including the enforcement of Section 3008(h), has not been delegated to Illinois, and EPA directly enforces HSWA provisions and implementing regulations in that state.

discharged the sediment, additional remediation is required. U.S. SOF ¶ 88-90.

Second, Chemetco's ten-acre slag pile has been determined by both Illinois EPA and U.S EPA to contain lead at levels that exceed its regulatory threshold of 5.0 mg/L. U.S. SOF ¶ 86.

Third, residual contamination remains in the area in which Chemetco stored its lead-hazardous refractory bricks, pulverized refractory brick, and gunning material. U.S. SOF ¶ 68.

Fourth, U.S. determined in 1999 that is or has been a release of hazardous wastes into the environment from the Chemetco Facility, and that the Facility is subject to corrective action pursuant to RCRA Section 3008(h), 42 U.S.C. § 6928(h). U.S. SOF ¶ 92.

Accordingly, the Court should find Chemetco liable for the performance, at the direction of U.S. EPA, of a facility-wide corrective action, pursuant to RCRA Section 3008(h), 42 U.S.C. 6928(h), to identify, investigate, and remediate all solid waste management units on the Facility property, as identified by U.S. EPA.

#### CONCLUSION

For all the foregoing reasons, the United States requests entry of partial summary judgment in its favor on liability for the violations alleged in the Second, Third, Fourth, Fifth,

Sixth, Seventh, Eighth, and Tenth Claims for Relief set forth in the United States' Complaint.

Dated: //29/0)\_\_\_\_

Respectfully submitted,

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1/39/2002

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

and PEOPLE OF THE STATE OF ) ILLINOIS, ex rel. JAMES E. RYAN, )	
ILLINOIS, ex rel. JAMES E. RYAN.	
1251 (010) <u>0111911</u> 01 111120 21 111111 ()	
Attorney General of the State of Illinois, )	
)	
Plaintiffs, )	
)	
v. ) Civil	No. 00-670-DRH
) (cons	colidated with 00-677-DRH
CHEMETCO, INC., ) CJRA	A Track C
) Hon.	David R. Herndon
Defendant. ) U.S.	District Judge
)	

# UNITED STATES' STATEMENT OF MATERIAL FACTS IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Rule 7.1(h) of the Local Rules of the United States District Court for the Southern District of Illinois, Plaintiff United States of America ("United States") hereby submits the following statement of material facts in support of its motion for partial summary judgment.

### I. <u>Description of Facility and Operations</u>

- 1. Chemetco, Inc. ("Chemetco" or "Defendant") owns a secondary copper smelting facility located in Hartford, Madison County, Illinois ("Chemetco Facility").
- 2. Chemetco built its Facility in 1970 on property it acquired near Hartford on the east side of Illinois Route 3, south of the Cahokia Diversion Drainage Canal, and north of Long Lake, a tributary of the Mississippi River.
- 3. Chemetco operated its Facility until October 31, 2001, when it ceased operations.

- 4. On November 7, 2001, Chemetco filed, in this judicial district, a petition for bankruptcy under Chapter 7 of the bankruptcy code. *See In re Chemetco*, *Inc.*, 01-34066 (Bankr. S.D. Ill.).
- 5. Chemetco's plant consists, among other things, of four furnaces which bronzed, smelted, and refined copper- and other metal-bearing scrap. Chemetco produced anode copper, crude lead-tine solder, crude zinc oxide, and slag. Illinois Exhibit "j," Illinois EPA RCRA Inspection Report by Christopher Cahnovsky, July 11, 2001 ("Illinois Ex. "j", Group Ex. A-11, July 11, 2001 Cahnovsky Insp. Rpt."), Narrative at 1.
- 6. Chemetco is regulated as an interim status facility undergoing closure of several RCRA units and as a large quantity generator of hazardous waste. Id.

### II. Facts Pertaining to U.S. Second Claim for Relief: Violations of 1996 NPDES Permit

- 7. On May 20, 1996, IEPA issued Chemetco a new NPDES permit ("1996 NPDES Permit") which replaced a 1990 NPDES Permit. 1996 NPDES Permit, Exhibit B to U.S. Compl., ("U.S. Ex. 1.B, 1996 NPDES Permit").
- 8. The 1996 NPDES Permit authorized Chemetco to discharge storm water from the Facility's sole permitted outfall to Long Lake, a navigable water, but limited the authorized discharge to storm water that is "free from process or other wastewater discharges." U.S. Ex. 1.B, 1996 NPDES Permit, at 3 (Special Condition 2).
- 9. The 1996 NPDES Permit contains no specific numeric effluent discharge limits, however, the permit includes Special Conditions which set forth several requirements pertaining to the development and implementation of a storm water pollution prevention plan. 1996 NPDES Permit, at

- b) U.S. Ex. 3, Declaration of William K. Tong, ¶ 13, discussing John Maguire's report of his September 22, 1997 inspection of the Chemetco facility (attached to Tong Decl.), and particularly discussing Chemetco's exceedance of its deadlines for completion of the Storm Water Pollution Prevention Plan and for its annual facility inspection for storm water;
- c) U.S. Ex. 3, Declaration of William K. Tong, ¶ 14, referencing Peter Swenson's September 24, 1997, "Review of Chemetco Storm Water Pollution Prevention Plan (SWPP)" (attached to Tong Decl.), which identifies many deficiencies of the plan ('the plan is very sketchy . . . it appears that there are a number of areas that are either missing or weak based on permit requirements);
- d) U.S. Ex. 3, Declaration of William K. Tong, ¶ 15, discussing additional deficiencies of Chemetco's SWPP based on John McGuire's field notes of his September 22, 1997 inspection (SWPP not signed; SWPP lacks necessary details for controlling storm water discharges; annual inspection not completed by May 20, 1997; SWPP made no mention of plans for a major rerouting of storm water discharges, a gross deficiency); and
- e) Illinois Exhibit "i," State's First Request for Admission of Facts and Chemetco's Response, *United States and State of Illinois v. Chemetco, Inc.*, No. 00-CV-670-DRH ("Illinois Ex. "i,"Illinois RFA"), Chemetco Response, ¶ 101 ("Defendant admits that there was no report submitted by July 20, 1997").

- III. Facts Pertaining to U.S. Third Claim for Relief: Unpermitted Discharge of Pollutants into Waters of the United States in Violation of the Clean Water Act.
- 14. On September 18, 1996, representatives of U.S. EPA and IEPA conducted an inspection of the Chemetco Facility to assess Chemetco's compliance with RCRA. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt, Narrative at 1.
- 15. During that inspection, U.S. EPA and IEPA inspectors observed a gray sediment being discharged or released from a secret pipe which measured approximately 10 inches in diameter at the point of discharge on Chemetco's property into an unnamed tributary of Long Lake. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 2.
- 16. On September 18, 1996, IEPA took samples of the gray sediment being discharged or released from the 10-inch Pipe. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 4.
- 17. Analytical data resulting from application of the Toxicity Characteristic Leaching Procedure to the samples of the gray sediment taken on September 18, 1996 indicated that the sediment contained concentrations of lead and cadmium equal to or in excess of those substances' respective toxicity concentration levels of 5.0 mg/l and 1.0 mg/l. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt. Narrative at 6.

### A. Indictment

18. Following the September 18, 1996 discovery of the secret pipe and the discharge therefrom, and a subsequent investigation of the facts pertaining to the construction and operation of the secret pipe, the United States indicted Chemetco and several supervising employees for environmental

- violations. Illinois Ex. "a," Indictment, *United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, (S.D. Ill. April 21, 1999) ("Illinois Ex. "a," Indictment").
- 19. The indictment charged the defendants with conspiring, from 1986 through September 18, 1996, to violate the Clean Water Act by discharging pollutants, including lead, cadmium, and zinc, through a secret pipe into Long Lake and its adjacent wetlands without an NPDES permit. (Illinois Ex. "a," Indictment, Count One, at 1-11).
- 20. The indictment also charged the defendants with violating the Clean Water Act by the same conduct. (Illinois Ex. "a," Indictment, at 11).
- 21. Chemetco was also charged making materially false statements to the United States Environmental Protection Agency (Illinois Ex. "a," Indictment, at 11-13) and to the United States Army Corps of Engineers. (Illinois Ex. "a," Indictment, at 11-14).

### B. Plea of Guilty and Stipulation

- 22. On January 11, 2000, Chemetco pleaded guilty to Counts One and Two of the Indictment, and pleaded *nolo contendere* to the Counts Three and Four. Illinois Exhibit "b," Defendant's Agreement to Plead Guilty, *United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, (S.D. Ill. Jan. 11, 2000)
  - 23. Chemetco also stipulated to the following facts:
- a) Chemetco discharged contaminated storm water into the wetlands surrounding the discharge pipe (south of facility) and the unnamed ditch tributary located on Chemetco's property. Illinois Exhibit "c," Stipulation of Fact, *United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, (S.D. Ill. Jan. 11, 2000) ("Illinois Ex. "c," Stipulation") at 6, ¶ 23.

- b) Inspectors observed polluted water flowing into the ditch draining into Long Lake (Illinois Ex. "c," Stipulation, at 6, ¶ 21);
- c) Chemetco discharged contaminated storm water after the expiration of its permit for Outfall 001 (Illinois Ex. "c," Stipulation, at 3);
- d) Chemetco discharged contaminated storm water in violation of its permit for Outfall 002 (Illinois Ex. "c," Stipulation, at 4-5);
- e) From the time of the secret pipe's installation in or about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, from the Chemetco plant site and into the unnamed ditch tributary to Long Lake located on property owned by Chemetco (Illinois Ex. "c," Stipulation, at 5, ¶ 19);
- f) Chemetco did not have a permit under the Clean Water Act to discharge pollutants from the secret pipe into the unnamed ditch tributary to Long Lake (Illinois Ex. "c," Stipulation, at 5, ¶ 20).
- g) The discharge also went onto wetlands surrounding the discharge pipe and the unnamed ditch tributary located on property owned by Chemetco (Illinois Ex. "c," Stipulation, at 6, ¶ 23).
- h) Visible evidence of contamination extended five feet down into the bed of Long Lake, a tributary of the Mississippi River, in areas located on property owned by Chemetco.
- i) Sampling from areas of contamination confirmed the presence of lead and cadmium (Illinois Ex. "c," Stipulation, at 6, ¶ 22 and 24).

### C. Conviction, Sentence, and Appeal

- 24. On October 30, 2000, the United States District Court for the Southern District of Illinois sentenced Chemetco to a fine, penalty, injunctive relief, and conditions of probation. (Illinois Exhibit "d," Judgment in a Criminal Case, *United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, (S.D. Ill. Oct. 30, 2000).
- 25. On appeal, Chemetco challenged the penalties in one of the four counts, but did not challenge the conviction. *See United States v. Chemetco, Inc.*, No. 00-3940, Docket Entry case argued on April 20, 2001 (7th Cir. April 20, 2001).
- 26. The District Court's sentence was affirmed on December 17, 2001. See United States v. Chemetco, Inc., 274 F.3d 1154 (7th Cir. 2001).
- IV. Facts Pertaining to U.S. Fourth and Fifth Claims for Relief: Unpermitted Filling of Wetlands and Failure to Comply with Administrative Order.
- 27. Sometime after 1972 but before 1980, Chemetco purchased next to its facility an area of approximately 8 acres located in Section 16, Township 4 North, Range 9 West, City of Hartford, County of Madison, State of Illinois. U.S. Ex. 4 (United States' First Request for Admissions ("U.S. RFA")) at 9-10 & ¶1; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 2 (response to question 2).
  - 28. Prior to 1980, at least 4.08 acres of this area, and possibly the entire area, were

<sup>&</sup>lt;sup>1</sup> By operation of law, Chemetco's failure to respond to the United States' First Requests for Admissions (served on September 17, 2001) conclusively establishes each "matter for which an admission [was] requested." Fed. R. Civ. P. 36; e.g., Huey v. United Parcel Service, Inc., 165 F.3d 1084, 1085 (7th Cir. 1999).

- wetlands, *i.e.*, areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions. U.S. Ex. 4 (U.S. RFA) at 10 &  $\P$  83-88.
- 29. Prior to 1980, the wetlands did not consist of chunk slag, limestone gravel, or broken concrete. U.S. Ex. 4 (U.S. RFA) at ¶¶ 2-5.
- 30. In 1980, Chemetco added to the wetlands chunk slag, <u>i.e.</u>, industrial waste from Chemetco's facility. U.S. Ex. 4 (U.S. RFA) at ¶¶ 6, 8-13; U.S. Ex. 4 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 4 (response to question 9).
- 31. On top of the slag, Chemetco added limestone gravel, *i.e.*, rock. U.S. Ex. 4 (U.S. RFA) at ¶ 7, 14; U.S. Ex. 5 (Chemetco's January 30, 1998 response to EPA's request for information) at 3 (response to question 8).
- 32. To deposit and level out the slag and gravel, Chemetco used front-end loaders.

  U.S. Ex. 4 (U.S. RFA) at ¶¶ 15-19; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S.

  EPA's request for information) at 3-4 (response to questions 7, 8, 10).
- 33. These front-end loaders conveyed the slag and gravel to the wetlands in a discernable, confined, and discrete way. U.S. Ex. 4 (U.S. RFA) at ¶¶ 20-30.
- 34. On more than one occasion from 1980 to 1997, Chemetco continued to use frontend loaders to add limestone gravel to the wetlands. U.S. Ex. 4 (U.S. RFA) at ¶¶ 32, 43-47, 58-59, 64-70; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 3 (response to questions 6, 7). See also Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 3 ("On the south side of the facility . . ., Chemetco is filling in what appears to

be a wetland area with fill to increase the size of the contractors parking area. In several of the fill areas, Chemetco was using waste mixed with the fill material.").

- 35. Also after 1980, and on more than one occasion through 1997, Chemetco added broken concrete to the wetlands. U.S. Ex. 4 (U.S. RFA) at ¶¶ 31, 33-36, 42; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 3 (response to questions 6, 8). *See also* Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 3.
- 36. The broken concrete consisted of waste from Chemetco's facility, as well as rock and sand. U.S. Ex. 4 (U.S. RFA) at ¶¶ 48-54; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 3 (response to question 8).
- 37. Front-end loaders and/or bulldozers conveyed the broken concrete to the wetlands in a discernible, confined, and discrete way. U.S. Ex. 4 (U.S. RFA) at ¶¶ 37-41, 55-57, 60-63; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 4 (response to question 10).
- 38. Previously and currently, Chemetco used the wetlands area as a truck parking lot.

  U.S. Ex. 4 (U.S. RFA) at ¶¶ 73-74; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S.

  EPA's request for information) at 2-3 (response to questions 4, 5); Illinois Ex. "j", Group Ex. A-1,

  Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 3 ("Chemetco is filling in what appears to be a wetland area with fill to increase the size of the contractors parking area."); Sept. 18, 1996 Insp.

  Photos, Roll 2884, Nos. 12C, 13C (parking lot visible in upper middle of photograph); Sept. 18, 1996 Insp. Photos, Roll 2887, No. 9E (southern portion of parking lot); Sept. 18, 1996 Insp. Photos, Roll

- 2991, Nos. 2F, 3F, 4F, 5F, 6F, 11F, 12F, 17F, 18F (various photographs showing the fill material).
- 39. Additionally, Chemetco disposed of metal debris in the parking lot, and there are metal bearing materials and copper parts in it. Illinois Ex. "i" (Illinois RFA) at ¶¶ 79, 83, 85; Illinois Ex. "i" (Chemetco's response to Illinois RFA) at ¶ 79; U.S. Ex. 6 (Chemetco's amended response to Illinois RFA) at ¶¶ 83, 85; Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 3; U.S. Ex. 4 (U.S. RFA) at 9-10 ("Site" for purposes of U.S. RFA is the same as "Contractors' parking lot" for purposes of Illinois RFA).
- 40. The parking lot is dry, and its surface elevation is higher than the area's surface elevation before construction of the lot. U.S. Ex. 4 (U.S. RFA) at ¶ 71, 72, 95.
- 41. The materials Chemetco added to the wetlands cover a depth of approximately 93,000 cubic yards. U.S. Ex. 4 (U.S. RFA) at ¶¶ 81-82; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 3 (response to question 8).
- 42. The wetlands associated with the parking lot border, are contiguous to, and neighbor Long Lake. U.S. Ex. 4 (U.S. RFA) at ¶¶ 89-94; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 2 (response to question 2).
- 43. At least prior to Chemetco's construction of the parking lot, some amount of surface water drained off the wetlands to Long Lake. U.S. Ex. 4 (U.S. RFA) at ¶ 98.
- 44. Long Lake flows into and is a tributary of the Mississippi River. U.S. Ex. 4 (U.S. RFA) at ¶¶ 99-103.
- 45. The Mississippi River is navigable in fact and has historically been used, and currently is used, to transport interstate commerce. U.S. Ex. 4 (U.S. RFA) at ¶¶ 104-08.

- 46. Chemetco did not apply for or receive any type of federal, state, country, or municipal permit to construct the parking lot. U.S. Ex. 4 (U.S. RFA) at ¶¶ 109-112; U.S. Ex. 5 (Chemetco's January 30, 1998 response to U.S. EPA's request for information) at 4 (response to question 11); Illinois Ex. "i" (Illinois RFA) at ¶ 93; Illinois Ex. "i" (Chemetco's response to Illinois RFA) at ¶ 93.
- 47. In particular, Chemetco did not apply for or receive a permit from the United States Army Corps of Engineers under section 404 of the Clean Water Act for any activity in (e.g., filling) the wetlands. U.S. Ex. 4 (U.S. RFA) at ¶ 110, 112.
- 48. On September 27, 1997, U.S. EPA issued an Administrative Order to Chemetco.
  U.S. Ex. 1, U.S. Compl. ¶ 53 & Compl. Ex. C (Administrative Order); U.S. Ex. 7, Chemetco's
  Answer to U.S. Compl. ¶ 53.
- 49. The Administrative Order stated that Chemetco was required to submit to U.S. EPA, within 30 days of its receipt of the Administrative Order, a plan for restoring the wetlands to their original condition and contours and, after approval of any portion of a plan by U.S. EPA, to implement the approved portion of the plan. U.S. Ex. 1, U.S. Compl. Ex. C. (Administrative Order) at 5.
  - 50. Chemetco received the Administrative Order. U.S. Ex. 4 (U.S. RFA) at ¶ 113.
- 51. Chemetco did not submit to U.S. EPA within 30 days of its receipt of the Administrative Order a written plan to restore the wetlands to their original condition and contours.

  U.S. Ex. 4 (U.S. RFA) at ¶¶ 114-115.
- 52. Chemetco has not, to date, obtained U.S. EPA's approval of a wetlands restoration plan. U.S. Ex. 4 (U.S. RFA) at ¶ 116.

- 53. Chemetco has not, to date, implemented any wetlands restoration plan. U.S. Ex. 4 (U.S. RFA) at ¶ 117.
- 54. Chemetco has not removed any of the chunk slag, limestone gravel, or broken concrete it added to the wetlands. U.S. Ex. 4 (U.S. RFA) at ¶¶ 75-79.
- 55. Chemetco has not, to date, performed any work designed to restore the wetlands to the condition they were in prior to construction of the parking lot. U.S. Ex. 4 (U.S. RFA) at ¶ 118.
- V. Facts Pertaining to U.S. Sixth Claim for Relief: Unpermitted Storage and/or Disposal of Refractory Brick, Pulverized Refractory Brick and Gunning Material.
- 56. During the September 18, 1996 inspection, the inspectors, while on property owned by Chemetco south of Oldenberg Road, observed green bricks and green powder or dust, and green debris resulting from refractory brick and gunning material. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 3.
- 57. The dust (powder) powder and green debris was pulvérized refractory brick and gunning material that is used to fill the gaps between refractory bricks. Illinois Ex. "j", Group Ex. A-4, June 4, 1997, Narrative at 1.
- 58. The refractory bricks in Chemetco's furnaces were replaced every three to six months. Illinois Ex. "j," Group Ex. A-3, May 2, 1997 Cahnovsky Insp. Rep., at 2.
- 59. The bricks stored on the ground in the southwest portion of Chemetco's property were waste. Illinois Ex. "i," Illinois RFA, ¶ 7 ("Prior to 1997, Defendant began storing waste refractory brick on the ground in the southwest portion of its facility"), and Chemetco Response ¶ 7, ("Defendant admits the allegations contained in paragraph 7").

- disposed. Under III. Adm. Code 721.102(c)(1)(A), materials are solid wastes if they are accumulated, stored or treated in a manner constituting disposal before being recycled. *See* Appendix Z: Table to III. Adm. Code 721.102. By-products (nonlisted or characteristic) applied to or placed on the land in a manner constituting disposal are solid wastes. The practice of mixing this material with concrete, wood, waste, metal and plastic constitutes disposal. Therefore the green bricks (refractory brick), powder and debris (gunning material) are solid waste. Illinois Ex. "j", Group Ex. A-4, June 4, 1997, Narrative at 2.
- 61. Analytical data resulting from the application of the Toxicity Characteristic

  Leaching Procedure to the samples of refractory brick, pulverized refractory brick, and gunning

  material taken on April 21, 1997 indicated that those materials contained concentrations of lead equal

  to or in excess of that substance's toxicity characteristic level of 5.0 mg/l, subjecting those materials to
  regulation as hazardous wastes under 35 Ill. Adm. Code 724.124/40 C.F.R. § 261.24. Illinois Ex. "j,"

  Group Ex. A-3, May 2, 1997 Cahnovsky Insp. Rpt., Narrative at 3; Illinois Ex. "j," Group Ex. A-4,

  June 4, 1997 Cahnovsky Insp. Rpt., Narrative at 1-3; U.S. Ex. 8.k, Oct. 22, 1999 Cahnovsky Insp.

  Rpt., at 6.
- 62. An IEPA inspector observed three waste piles in the brick storage area south of Oldenberg Road. One waste pile consisted of hand-picked refractory brick and other waste. The other two piles consisted of excavated soil, rock, refractory brick and other waste. The two piles of excavation waste were designated by Chemetco as Fill Pile #1 and Fill Pile #2. U.S. Ex. 8.k, Oct. 22, 1999 Cahnovsky Insp. Rpt, at 6.

- 63. Storage of the waste refractory brick contaminated the underlying and adjacent soil. Illinois Ex. "i," Illinois RFA, and Chemetco Response ¶ 15, ("Defendant admits that the storage of the waste refractory brick on the ground in the wastepile resulted in the contamination of the soil under and adjacent to a wastepile with contaminants including lead and cadmium, but denies that there was more than one wastepile").
- 64. Chemetco, in accumulating the lead-hazardous waste refractory brick, pulverized refractory brick, and associated gunning material, did not comply with the regulations requiring that accumulated wastes must be stored in containers, tanks, containment buildings, or drip pads.

  Illinois Ex. "i," Illinois RFA, ¶ 11 ("Defendant did not store the waste refractory brick in a manner that complied with the applicable regulatory requirements for storage of hazardous wastes"), and Chemetco Response ¶ 10 ("Defendant admits the allegations contained in Paragraph 11").
- 65. Chemetco did not file with U.S. EPA either Part A or Part B of the RCRA permit application for the lead-hazardous waste refractory brick, pulverized refractory brick, and associated gunning material disposed and/or stored on Chemetco's property south of Oldenberg Road, and does not possess a permit to treat, store or dispose of the lead-hazardous waste refractory brick, pulverized refractory brick, or associated gunning material in areas south of Oldenburg Road. Illinois Ex. "j," Group Ex. A-4, June 4, 1997 Cahnovsky Insp. Rpt., Narrative at 1-4 ("Chemetco failed to have post-closure permit for the storage of hazardous waste refractory material in a waste pile . . . Chemetco failed to have obtained a Part B Permit before the storage of hazardous waste refractory brick in a waste pile . . . "i," Illinois Ex. "i," Illinois RFA ¶ 10 ("Defendant did not have a permit to store the waste refractory brick on the ground"), and Chemetco Response ¶ 10 ("Defendant admits the

- allegations contained in Paragraph 10"); Illinois Ex. "j", Group. Ex. A-6, July 7, 1997 Cahnovsky Insp. Rpt. at 1 (in grid of "TSD Facility Activity Summary," in first column under "Activity by Process Code," specifically at SO3, noting that the facility possessed neither a RCRA Part A or Part B permit for the "Refractory Brick waste pile & Slag fine waste pile").
- 66. On September 30, 1997, Chemetco shipped the refractory waste pile off-site.

  Illinois Ex. "j," Group Ex. A-9, May 5, 2000 Cahnovsky Insp. Rep. at 1. However, Fill Piles 1 and 2 remained on-site. U.S. Ex. 8.k, Oct. 22, 1999 Cahnovsky Insp. Rpt., at 6.
- 67. Between May 3 and May 11, 2000, Fill Piles #1 and #2 were excavated and shipped to Peoria Disposal Company in Peoria, Illinois as a hazardous waste (D008). Chemetco shipped about 847 tons to the Peoria Disposal Company. Illinois Ex. "k," Group Ex. A-4, July 11, 2001, Cahnovsky Insp. Rep., Narrative at 6.
- 68. Although Chemetco removed the waste piles from the site, further remediation is needed to address the residues. Illinois Ex. "j," Group Ex. A-9, May 5, 2000 Cahnovsky Insp. Rep. at 2.
- VI. Facts Pertaining to U.S. Seventh Claim for Relief: Unpermitted Storage and/or Disposal of Cadmium- and Lead-Contaminated Soil.
- 69. On September 18, 1996, representatives of U.S. EPA and IEPA conducted an inspection of the Chemetco Facility to assess Chemetco's compliance with RCRA. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 1.
- 70. During that inspection, U.S. EPA and IEPA inspectors observed a gray sediment being discharged or released from a secret pipe which measured approximately 10 inches in diameter at

the point of discharge on Chemetco's property into an unnamed tributary of Long Lake. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 2.

- 71. On September 18, 1996, IEPA took samples of the gray sediment being discharged or released from the 10-inch Pipe. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 4.
- 72. Analytical data resulting from application of the Toxicity Characteristic Leaching Procedure to the samples of the gray sediment taken on September 18, 1996 indicated that the sediment contained concentrations of lead and cadmium equal to or in excess of those substances' respective toxicity concentration levels of 5.0 mg/l and 1.0 mg/l. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt., Narrative at 6.
- 73. On January 11, 2000, in the criminal action Chemetco also stipulated to the following facts:
- a) From the time of the secret pipe's installation in or about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, from the Chemetco plant site and into the unnamed ditch tributary to Long Lake located on property owned by Chemetco (Illinois Ex. "c," Stipulation, at 5, ¶ 19);
- b) Sampling from areas of contamination confirmed the presence of lead and cadmium (Illinois Ex. "c," Stipulation, at 6, ¶¶ 22 and 24).
- 74. On or about September 21, 1996, at Chemetco's request, the U.S. Army Corps of Engineers issued to Chemetco, pursuant to CWA Section 404, and subject to certain specified

conditions, a one-year emergency authorization to divert the course of, and dam up, Long Lake as part of Chemetco's effort to consolidate, contain and remove from Long Lake and its unnamed tributary the cadmium- and lead-bearing slurry that had been discharged or released from the secret pipe. Illinois Ex. "j", Group Ex. A-1, Sept. 18, 1996 Cahnovsky Insp. Rpt, Narrative at 6, and attached September 21, 1996 letter to Chemetco from Michael Ricketts, Corps of Engineers' River Projects Manager; U.S. Ex. 8.k, Oct. 22, 1999 Cahnovsky Insp. Rpt.

- 75. As part of the consolidation, containment and removal effort conducted by Chemetco, Chemetco constructed one or more impoundment dams on, created one or more containment cells within, and diverted and/or drained a portion of, Long Lake. U.S. Ex. 8.a, Oct. 10, 1996 Cahnovsky Insp. Rpt., at 1.
- 76. Prior to October 10, 1996, Chemetco, as part of its consolidation, containment, and removal effort, completed construction of four unlined temporary holding cells or impoundments adjacent to Long Lake. U.S. Ex. 8.a., Oct. 10, 1996 Cahnovsky Insp. Rpt., at 2.
- 77. Containment Area No. 1 comprised the area where the secret pipe was located and the zinc oxide was discharged. Zinc oxide contaminated trees and vegetation were removed from Containment Area No. 1 and placed in Containment No. 4. Containment Area No. 2 held water from Containment Areas No. 1, 3, and 4. <u>Id.</u>, at 2-3.
- 78. The cadmium- and lead-bearing slurry and associated debris that had been excavated from Long Lake was deposited into Containment Area No. 3 but was moved to Containment Area No. 1. U.S. Ex. 8.b, Oct. 30, 1996 Cahnovsky Insp. Rpt., at 1 (First ¶).
  - 79. The United States' Complaint refers to all of the cadmium- and lead-bearing slurry

- and the associated debris in Containment Area No. 1 collectively as "cadmium- and lead-contaminated soil." U.S. Ex. 1, U.S. Compl. ¶ 111.
- 80. After the cadmium- and lead-bearing slurry and associated debris was moved from Containment Area No. 3 to Containment Area No. 1, concentrations of TCLP metals equal to or in excess of 5.0 mg/l remained in Containment Area No. 3. U.S. Ex. 8.b, Oct. 30, 1996 Cahnovsky Insp. Rpt., at 1 (First ¶).
- 81. As part of its consolidation and containment efforts, Chemetco constructed a wood pile adjacent to Long Lake, which was comprised in part of dead trees. Analytical data resulting from application of the TCLP to samples of the dead trees in the wood pile demonstrated that the dead trees exhibited the toxicity characteristic for lead at concentrations in excess of 5.0 mg/l. U.S. Ex. 8.a, Oct. 10, 1996 Cahnovsky Insp. Rpt., at 2-3; U.S. Ex. 9, Declaration of Patrick Kuefler, ¶ 6.
- 82. Chemetco storage of the cadmium- and lead-contaminated soil and did not comply with the regulations requiring that accumulated wastes must be stored in containers, tanks, containment buildings, or on drip pads. U.S. Ex. 9, Kuefler Decl. ¶ 6.
- Application for the cadmium- and lead-bearing contaminated "soil" and does not possess a permit under RCRA to treat, store or dispose of the slag in the Slag Pile. Illinois Ex. "j," Group Ex. A-5, June 12, 1997 Cahnovsky Insp. Rpt., Narrative. Illinois Ex. "j", Group Ex. A-6, July 7, 1997 Cahnovsky Insp. Rpt. At 1 (in grid of "TSD Facility Activity Summary," in first column under "Activity by Process Code," specifically at D83, noting that the facility possessed neither a RCRA Part A or Part B permit for the "newly Discovered Zinc Oxide disposal in S.I.").

# VII. Facts Pertaining to U.S. Seventh Claim for Relief: Unpermitted Storage of Lead-Bearing Slag.

- 84. Chemetco generated slag from its smelting operations and stored slag at the Facility. Illinois Ex. "j," Group Ex. A-5, June 12, 1997 Cahnovsky Insp. Rpt., Narrative; Illinois Ex. "j," Group Ex. A-11, July 11, 2001 Cahnovsky Insp. Rpt., at 3 ("slag is generated as a byproduct of . . . Chemetco's process"); Illinois Ex. "i," Illinois RFA ¶ 23, and Chemetco Response, ¶ (referring to the placement of small diameter fines near and on the edge of the "existing slag pile"); Illinois Ex. "j," Group Ex. A-3, May 2, 1997 Cahnovsky Insp. Rpt., at 1 (referring to slag pile on the north side of the plant, and the spraying of the slag pile with water for dust suppression purposes);
- 85. Chemetco began to store slag at the Facility as far back as 1980 and, as of 1997, Chemetco had accumulated approximately 500,000 tons of slag covering approximately ten acres.

  U.S. Ex. 8.e, April 7, 1997 Cahnovsky Insp. Rpt. at 1 ("this [slag] pile covers approximately 10 acres of Chemetco's property").
- 86. The Illinois EPA and U.S. EPA have both tested the slag generated by Chemetco and have both determined that the slag fails the Toxicity Characteristic Leaching Procedure for lead. Illinois Ex. "j," Group Ex. A-11, July 11, 2001 Cahnovsky Insp. Rpt., at 3.
- 87. Chemetco did not file with U.S. EPA either Part A or Part B of the RCRA Permit Application for the slag in the Slag Pile and does not possess a permit under RCRA to treat, store or dispose of the slag in the Slag Pile. Illinois Ex. "j," Group Ex. A-5, June 12, 1997 Cahnovsky Insp. Rpt., Narrative.

# VIII. Facts Pertaining to U.S. Tenth Claim for Relief: Determination of Release of Hazardous Wastes

- 88. Contamination resulting from the illegal discharge from the secret pipe into Long Lake has been found outside of Containment Area No. 3. Half of the samples taken from Long Lake on June 7, 2000 exhibit the characteristics of a hazardous waste. The sediments in Long Lake for a distance of about 950 feet downstream of the discharge area contain levels of cadmium above the regulatory limits. The sediment should be excavated and treated Illinois Ex. "j," Group Ex. A-10, June 7, 2000 Cahnovsky Insp. Rpt., Narrative at 5.
- Area No. 1, portion of the Containment Area No. 2, the inlet ditch and under the rock road.

  Wastewater was shipped the St. Louis Metropolitan Sewer District in St. Louis, Missouri. Chemetco began to treat the waste pursuant to a proposed plan. Ten loads of waste were initially tested.

  However, because Chemetco could not meet the RCRA Land Disposal Restriction treatment standards, the temporary treatment unit was removed and the remaining waste was shipped off-site untreated. Between December 2000 and July 2001, Chemetco shipped 5,800 tons of hazardous waste soil to Peoria Disposal Company in Peoria, Illinois. Chemetco reported to IEPA that it had removed all of the soil that is characteristically hazardous for lead and cadmium from Containment Area Nos. 1, 2, 3, and 4. Illinois Ex. "j," Group Ex. A-11, July 11, 2001 Cahnovsky Insp. Rpt., at 6.
- 90. The portion of Long Lake outside of the containment cells has not been cleaned up by Chemetco. Levels of cadmium exceeding the TCLP limit of 1.0 mg./L have been found directly outside of Containment Area No. 3. Id.

Pursuant to the authority delegated to the Regional Administrator of U.S. EPA 91. Region 5 by the U.S. EPA Administrator, and redelegated by said Regional Administrator, the Chief of the Enforcement and Compliance Assurance Branch of the Waste, Pesticides and Toxics Division, U.S. EPA Region 5, determined, on December 13, 1999, that there is or has been a release of hazardous wastes into the environment from the Chemetco Facility, and that the Facility is subject to corrective action pursuant to RCRA Section 3008(h), 42 U.S.C. § 6928(h).

U.S. Ex. 9, Kuefler Decl. ¶ 13.

Respectfully submitted,

THOMAS L. SANSONETTI Assistant Attorney General Environment and Natural Resources Division

Dated: January 27, 2002

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### **CERTIFICATE OF SERVICE**

The undersigned counsel for Plaintiff United States of America hereby certifies that on January 2002, I caused the foregoing United States' Statement of Material Facts in Support of its Motion for Partial Summary Judgment (with exhibits 1 through 9) to be served via federal express on the following opposing counsel of record, bankruptcy trustee, and debtor attorney:

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ATTORNEY FOR THE UNITED STATES

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1/28/2002

## UNITED STATES DISTRICT COUR'I SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, ex rel. JAMES E. RYAN, )	·	•
Attorney General of the State of Illinois,	)	٠
	)	
Plaintiffs,	)	
	)	
<b>v.</b>	)	Civil No. 00-670-DRH
·	)	(consolidated with 00-677-DRH)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon, David R. Herndon
Defendant.	)	U.S. District Judge
	j ,	

### **DECLARATION OF WILLIAM K. TONG**

I, William K. Tong, declare and state as follows:

- 1. The statements made in this affidavit are based on my personal knowledge.
- 2. I am currently employed as an Environmental Scientist in the Water Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA"). From October 21, 1991 to the present, I was employed as an Environmental Scientist/Enforcement Officer in the Water Enforcement & Compliance Assurance Branch, Section 2.
- 3. I have been employed at U.S. EPA for the past 10 years.
- In August, 1988, I received a Master of Science degree in Earth Science from Northeastern Illinois University.
- 5. While I worked as an Environmental Scientist/Enforcement Officer in the Water Enforcement & Compliance Assurance Branch, Water Division, U.S. EPA, my duties included various investigatory and enforcement activities concerning violations and

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suspected violations of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and other provisions of the Clean Water Act, including the industrial storm water regulations.

- 6. Also as part of my duties as an Enforcement Officer with the Water Enforcement and Compliance Assurance Branch, Water Division, U.S. EPA, I conducted inspections pursuant to Section 308(a)(B) of the Clean Water Act, 33 U.S.C. § 1318(a)(B), in order to determine compliance with the Clean Water Act, 33 U.S.C. § 1251, et seq. These inspections included the collection of water samples from facility outfalls, pipes, ditches, and other water conveyances. I was duly authorized by U.S. EPA to conduct such inspections.
- 7. I have been the case engineer assigned to EPA's enforcement action with regard to the Clean Water Act, Section 402, against the Chemetco facility since 1994. My duties and responsibilities with EPA have included developing, coordinating, and tracking enforcement actions undertaken pursuant to the Clean Water Act.
- 8. I have reviewed National Pollutant Discharge Elimination System ("NPDES") permit, #II.0025747, issued by the State of Illinois pursuant to the Clean Water Act to Chemetco... The NPDES permit regulates Chemetco's discharge of storm water out of discharge pipe Outfall 002. (The NPDES permit effective from August 26, 1990 through May 1, 1995 is hereto referred as the "1990 Permit" and the NPDES permit effective from May 20, 1996 through April 30, 2001 is hereto referred to as the "1996 Permit"). The 1990 Permit required Chemetco to meet numerical effluent limitations regulating the discharge of storm water from Outfall 002. The 1996 Permit did not require compliance with numerical effluent limitations but required that the facility monitor for flow. The 1996

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Permit also required, amount other things, that Chemeteo complete a comprehensive Storm water Pollution Prevention Plan within 180 days of the issuance of the permit, as well as conduct an annual storm water facility inspection report within one year of the issuance of the permit.

- 9. Chemeteo is required by the conditions of its NPDES permit to submit monitoring data to the State of Illinois on a monthly basis, recorded on Discharge Monitoring Reports ("DMRs"). Pursuant to 40 C.F.R. §§ 122.22(b) and (d), the District is required to certify that the information submitted in the DMRs is true, accurate, and complete. The DMRs that Chemeteo are required to submit on a monthly basis allow U.S. EPA and the State to determine whether Chemeteo has complied with the concentration-based effluent limitations and the other conditions and milestones established by the Permit.
- 10. The Permit Compliance System ("PCS") is a computer database tracking system shared by the State environmental agencies and U.S. EPA. PCS contains NPDES permit, compliance, and enforcement data (including effluent and permit violations, compliance milestones, and State/federal enforcement actions) for NPDES permit holders. The State environmental agencies provide periodic data input and day-to-day management of the PCS database, and U.S. EPA has access to the PCS database for the purpose of database retrievals. A summary report of NPDES permit violations by the Chemeteo facility was generated by Mr. James Coleman, U.S. EPA Region 5, through a PCS database retrieval, attached hereto as Exhibit A.
- 11. I have reviewed copies of all DMRs submitted by Chemeteo to the U.S. EPA for the period of July 1996 through and including April, 1999.

- D. Chemetoo has not conducted the annual inspection of storm water management practices nor of its SWPPP implementation, as required by the permit. This should have been done on May 20, 1997.
- E. The SWPPP made no mention of their plans for a major re-routing of storm water discharges this is a gross deficiency. Chemetco had abruptly abandoned their original plans for constructing a new outfall and treatment system. The plan originally called for replacing the current Outfall 002 with a new treatment plant, a temporary Outfall 003 and a new Outfall 004 to discharge treated water, to be located at the southeast end of the plant. This was the plan described to EPA during our site visit of 9/4/97, and in Chemetco's CWA 308 response. Because IEPA informed Chemetco on 9/17/97 that they would not meet the calculated boron discharge limit in Long Lake, Chemetco has now decided to buy land north of the facility to construct the treatment plant and Outfall 004, so that they could discharge treated storm water through the Cahokia Channel, which has higher effluent limits than Long Lake and allows a small mixing zone. The new "North End" plan still assumes that Outfall 002 will be abandoned/replaced.
- I prepared the attached Table of Violations (Exhibit E), tabulating Chemetco's violations of conditions of its 1990 Permit (effluent limit violations) and violations of its 1996 permit (unauthorized discharge, failure to complete in a timely fashion a Storm water Pollution Prevention Plan and an annual facility inspection report for storm water). From April, 1994 through April, 1996, Chemetco experienced 1,017 violations of its effluent limits. The zinc oxide spill was counted as 1 day of unauthorized discharge. The late completion dates of the Storm water Pollution Prevention Plan generated 47 days of violations, and the late completion date of the annual facility inspection for storm water generated 129 days of violations. In total, Chemetco had a total of 1,194 days of violations of the Clean Water Act.
- 17. Chemeteo must comply with the storm water management provisions of its NPDES permit for the duration of the permit. This includes the completion of a technically-sound Storm Water Pollution Prevention Plan ("SWPPP") subject to Illinois EPA approval, as well as continual management and routing of storm water to prevent the overflow of

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, ex rel. JAMES E. RYAN, )		
Attorney General of the State of Illinois,	)	
	) .	ı
Plaintiffs,	)	
	)	
v.	)	Civil No. 00-670-DRH
	)	(consolidated with 00-677-DRH)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge
	)	

#### DECLARATION OF PATRICK F. KUEFLER

- I. Patrick F. Kuefler, declare and state as follows:
- 1. The statements made in this declaration are based on my personal knowledge.
- 2. I am currently employed as an Environmental Scientist/Enforcement Officer in the Waste, Pesticides, and Toxics Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA"). I have been employed with U.S. EPA for the past eleven years, and I was assigned to the Enforcement & Compliance Assurance Branch, Waste, Pesticides, and Toxics Division, United States Environmental Protection Agency, Region 5 for four and one-half years. From February, 1991 until July, 1997, I was employed as an Environmental Scientist in U.S. EPA's Region 9, in San Francisco, California. During employment in Region 9, I served an extended detail with Arizona Department of Environmental Quality (ADEQ)located in Phoenix, Arizona between September, 1993 and July, 1997. During the detail with ADEQ, I served in several management positions including Supervisor of the Hazardous Waste Compliance Unit, Manager of the Hazardous Waste Section, and Manager of Underground Storage Tank Section. Upon completion of the detail with ADEQ, I transferred from U.S. EPA Region 9 to U.S. EPA Region 5.
- 3. In 1986, I received a Bachelor of Science degree in Biology from Saint Cloud State University, Saint Cloud, Minnesota.
- 4. While I worked as an Enforcement Officer in the Enforcement & Compliance Assurance Branch, Waste, Pesticides, and Toxics Division, U.S. EPA, my duties included various investigatory and enforcement activities concerning violations and suspected violations of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and other provisions of the RCRA.
- 5. Also as part of my duties as an Enforcement Officer with the Enforcement and Compliance Assurance Branch, Waste, Pesticides, and Toxics Division, U.S. EPA, I conducted



inspections pursuant to Section 3007 of RCRA, 33 U.S.C. § 6927, in order to determine compliance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq. These inspections included overseeing the collection of waste and media samples from facility waste generation, treatment, storage, and disposal areas. I was duly authorized by U.S. EPA to conduct such inspections.

- 6. On September 4, 1997, I participated in a site visit at Chemetco's Hartford, Illinois facility. During the site visit, I observed the area of the facility described as the zinc oxide release area containment cells. In unit described as containment cell 1, I observed a debris pile consisting of excavated zinc oxide slurry, contaminated wood, soil and other debris which had been disturbed, removed and consolidated to the area by Chemetco or its agents. The contaminated excavated zinc oxide slurry, contaminated wood, soil and other debris observed exhibited a characteristic of lead bearing hazardous waste and was not stored according to hazardous waste requirements by being placed in a tank, container or containment building.
- 7. On January 12, 1998 and February 16, 1999, I prepared and U.S. EPA issued Requests for Information pursuant to Section 3007 of RCRA to Chemetco sceking information related to wastes generated, treated, stored or disposed of at their Hartford, Illinois facility. Based on portions of Chemetco's responses to those requests, I made regulatory conclusions that Chemetco is in violation of several significant aspects RCRA as reflected in a Complaint filed in United States District Court, Southern District of Illinois, on August 25, 2000. Information supplied by Chemetco in response to the Agency Information Request support complaint counts slag was hazardous waste because it was speculative accumulated under RCRA in that there response demonstrates that less 75% of the slag recycled during a calendar year. Chemetco caused some slag to be used in manner constituting disposal by placing it on the land on-site and by selling the slag for use as roadbed material. Chemetco also actively managed and mixed non hazardous waste slag with hazardous waste slag causing both portions of Chemetco's slag pile hazardous waste under RCRA. Chemetco's lead bearing hazardous waste slag was not stored according to hazardous waste requirements by being placed in a tank, container or containment building. Copies of the Requests for Information and Chemetco's responses and related attachments are attached hereto as Exhibit 1.
- 8. On May 28, 1998, and May 29, 1998, I participated in a sampling inspection Chemetco's Hartford, Illinois facility. I was accompanied by John Koehnen, Kevin Higgins, Doug Updyke, and Antony Mubiru, who at the time of this inspection were sampling contractors to U.S. EPA.
- 9. During the course of the inspection, I observed the areas of the Chemetco facility where hazardous wastes or hazardous waste constituents were suspected to be generated, stored, treated, or disposed. Those areas included but are not limited to the hazardous waste storage bunker, the slag piles and adjacent crop fields, spent refractory brick piles and disposal areas, and the zinc oxide release areas including portions of Long Lake.
- 10. During the course of the inspection, oversaw and observed the U.S. EPA contractor implementation of a sampling plan for the Chemetco site prepared by TechLaw Inc., on behalf of U.S. EPA.

- 11. During the course of the inspection, the U.S. EPA contractors collected samples from areas described in the sampling plan. I provided direction to the samplers when field conditions warranted either modification of the plan or when conditions existed at the site that were not anticipated in the sampling plan. In addition, I oversaw the sampling activity to ensure that the primary objectives of the sampling plan were carried out, that sampling were collected and maintained properly, and securely delivered to the analytical laboratory.
- 12. Following the inspection, I reviewed the describing the sampling event and test results and documenting their observations and activities during the sampling inspection. This report was based on the field notes TechLaw Inc. personnel had made during the inspection. A complete copy of the above-mentioned inspection report and related materials is attached hereto as Exhibit 2. The report finds that Chemetco's slag exhibits a characteristic of a hazardous waste, that spent refractory brick and soils where spent refractory brick was stored exhibit a characteristic of a hazardous waste and that hazardous waste constituents were released to Long Lake and crop field adjacent to the slag pile.
- 13. Based on analytical test results obtained from the report prepared by TechLaw Inc., entitled "Field Sampling and Analyses Report" U.S. EPA determined that releases of hazardous waste constituents were released to the environment at Chemetco's Hartford, Illinois facility. U.S. EPA's Determination of a Release is attached hereto as Exhibit 3.
- 14. During the period of alleged violation, Chemetco did not have a permit issued by the State of Illinois to store hazardous waste in containment cell 1, Long lake, the refractory brick disposal area, or the slag pile at the Hartford, Illinois facility.
- 15. If called to testify as a witness, I am prepared to testify to the accuracy of the observations contained in the inspection report based on my personal knowledge.
- 16. All documents and reports referred to in this declaration and/or attached as exhibits hereto are kept in the normal course of business at U.S. EPA's offices in Chicago, Illinois and are to be considered official agency records.
- 17. The assertions made in the inspection report and in this declaration are truthful, and are based on my personal observations during the inspection; photographs taken during the inspection; statements made by representatives of Chemetco, Inc. immediately prior to, during and immediately after the inspection; and on my review of documents provided to me by U.S. EPA contractor TechLaw and Chemetco, as well as sample results, inspection reports and hazardous waste closure plan materials which Chemetco submitted to the Illinois Environmental Protection Agency. I would be willing to testify to these assertions under oath in a court of law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 1/28/02

By:

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
and PEOPLE OF THE STATE OF	)	
ILLINOIS, <u>ex rel.</u> JAMES E. RYAN,	)	
Attorney General of the State of Illinois,	)	
Plaintiffs,	)	•
	)	
v.	)	Civil No. 00-670-DRH
	)	(consolidated with 00-677-DRH)
CHEMETCO, INC.,	)	CJRA Track C
	)	Hon. David R. Herndon
Defendant.	)	U.S. District Judge
	)	

### **DECLARATION OF JOHN MCGUIRE**

- I, John McGuire, declare and state as follows:
- 1. The statements made in this affidavit are based on my personal knowledge.
- 2. I am currently employed as an Environmental Engineer in the Water Division, United States Environmental Protection Agency, Region 5 ("U.S. EPA"). I have been employed with U.S. EPA for the past 28 years, and I was assigned to Section II of the Water Enforcement and Compliance Assurance Branch for six and quarter years. From January 1974 to November 1977, I was employed as an Environmental Engineer in the Technical Support Branch of the Surveillance and Analyses Division of the U.S. EPA, Region 5. From November 1977 to October 1995 I was employed Environmental Engineer in the Central District Office of the Environmental Sciences Division of U.S. EPA, Region 5.
- 3. In 1973, I received a Bachelor of Science degree in Environmental Engineering from the University of Illinois at Chicago.
- 4. While I worked as an Enforcement Officer in the Water Enforcement and Compliance Assurance Branch, Water Division, U.S. EPA, my duties included various investigatory and enforcement activities concerning violations and suspected violations of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and other provisions of the Clean Water Act.
- 5. Also as part of my duties as an Enforcement Officer with the Water Enforcement and Compliance Assurance Branch, Water Division, U.S. EPA, I conducted inspections pursuant to

Section 308(a)(B) of the Clean Water Act, 33 U.S.C. § 1318(a)(B), in order to determine compliance with the Clean Water Act, 33 U.S.C. §1251 et seq. These inspections included the collection of water samples from facility outfalls, pipes, ditches, and other water conveyances. I was duly authorized by U.S. EPA to conduct such inspections.

- 6. On September 22, 1997, I conducted an inspection Chemetco's Hartford Illinois facility.
- 7. During the course of the inspection, I observed Chemetco's procedures for controlling and monitoring storm water run-off from the site.
- 8. During the course of the inspection I noted that Chemetco was required by the NPDES Permit (Permit) to prepare an Storm Water Prevention Plan (SWPP) within 180 days of the effective date of this Permit. The Permit became effective on May 20, 1996, making the SWPP due by November 16, 1996. Based on my observations on my inspection of the site Chemetco failed to have an adequate SWPP in place by November 16, 1996.
- 9. During the course of the inspection I noted that the Permit required that Chemetco conduct an annual of the storm facility water program inspection at the Hartford facility. The first inspection was to be conducted by May 20, 1997. Based on my observations on my inspection of the site this annual inspection had not been conducted as required.
- 10. During the inspection, I recorded my observations in field notes. All observations were recorded at the time I made the observations or immediately thereafter, and while the observations were fresh in my memory.
- 11. Following the inspection, I prepared an inspection report documenting my observations and activities during the inspection. This report was based on the field notes I had made during the inspection, and was prepared in accordance with my duties as an Enforcement Officer, and in the ordinary course of business. Exhibit 1, attached hereto, is a true, accurate and complete copy of the above-mentioned inspection report.
- 12. I am the custodian of all documents and reports referred to in this declaration and/or attached as exhibits hereto. Such documents are kept in the normal course of business at U.S. EPA's offices in Chicago, Illinois and are to be considered official agency records.
- 13. If called to testify as a witness, I am prepared to testify to the accuracy of the observations contained in the inspection report based on my personal knowledge.
- 14. The assertions I make in the inspection report and in this declaration are truthful, and are based on my personal observations during the inspection; the field notes I wrote during the inspection; photographs taken during the inspection; statements made by representatives of Chemetco, Inc. immediately prior to, during and immediately after the inspection; and on my

review of the requirements of the NPDES Permit issued by Illinois Environmental Protection Agency. I would be willing to testify to these assertions under oath in a court of law.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: Jan, 24, 2002 By: John M. Town



### U.S. Department of Justice

### Environment and Natural Resources Division

Gregory L. Sukys
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

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January 24, 2002

### VIA FACSIMILE AND U.S. MAIL

Laura K. Grandy, Esq. Mathis, Marifian, Richter & Grandy, Ltd. 720 W. Main Street Suite 100 Belleville, Illinois 62220 (618) 234-9800

Re:

In re Chemetco, Inc., Debtor, No. 01-34066 (Bankr. S.D. Ill.)

United States, et al. v. Chemetco, Inc., No. 00-CV-670-DRH (S.D. Ill.)

Dear Ms. Grandy:

Please accept this letter as a request that you reinstate the United States of America on your List of Parties Entitled to Notice of Further Bankruptcy Proceedings in <u>In re Chemetco, Inc.</u>, Debtor, No. 01-34066 (Bankr. S.D. Ill.).<sup>1</sup>

On or about August 25, 2000, the United States Department of Justice, acting on behalf of the United States Environmental Protection Agency, filed a civil complaint against Chemetco, Inc. in the United States District Court for the Southern District of Illinois (<u>United States, et al. v. Chemetco, Inc.</u>, No. 00-CV-670-DRH (S.D. Ill.)). The complaint alleges ten claims and seeks civil penalties and injunctive relief for alleged violations of various environmental laws. See Complaint (enclosed). That lawsuit remains unresolved, and, consistent with the district court's scheduling order and local rules, the United States is preparing a motion for partial summary judgment. (You should have received the Notice of Motion we filed last week.). We anticipate serving the motion and supporting documents on counsel of record on or about January 28, 2002.

We will serve you with our papers at the same time that we serve Chemetco's counsel of record. We would be pleased to discuss with you, at your convenience, your views on this matter as well as your intentions regarding remediation of the environmental contamination at Chemetco's facility

<sup>&</sup>lt;sup>1</sup>/<sub>2</sub> We note that the Office of the United States Attorney (S.D. Ill.), as holder of Claim No. 1, is already receiving notice of the proceedings in this bankruptcy. Thus, the granting of this request would result in the United States receiving additional notices of the proceedings in the bankruptcy.

in Hartford, Illinois.

In the meantime, we would appreciate your adding the following counsel to your list of parties entitled to notice:

Gregory L. Sukys U.S. Department of Justice Environmental Enforcement Section P.O. Box 7611 Washington, D.C. 20044

Thomas J. Martin Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604 Andrew J. Doyle U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986

Jeffery M. Trevino Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

Should you have any questions, or desire to discuss any aspects of the civil action against Chemetco, please call either of us at the numbers set forth above.

Sincerely,

Gregory L. Suky: Andrew J. Doyle

### Enclosure

cc: (via Facsimile and U.S. Mail)

Teresa A. Generous, Esq. James Morgan, Esq. (w/o encl.) Gerald Burke, Esq. (AUSA) (w/o encl.) Jeffery Trevino, Esq. (w/o encl.) Thomas Martin, Esq. (w/o encl.)

(via U.S. Mail only)

George M. von Stamwitz, Esq. (w/o encl.) John F. Cowling, Esq. (w/o encl.) Patrick M. Flynn, Esq. (w/o encl.)

U.S. ENVIRONMENTAL PROTECTION AGENCY

JAN 29 2002

OFFICE OF REGIONAL COUNSEL

# TABLE OF VIOLATIONS of 1990 NPDES PERMIT Chemetco, Inc. (Storm Water Outfall 002)

Parameter	Date	Reported Daily Max. Violation (mg/l)	Daily Max. Limit (mg/l)	Percent Exceedance (Daily Max.)	Reported 30-day Avg. Violation (mg/l)	30-day Avg. Limit (mg/L)	Percent Exceedance (30-day avg.)	Number of Days of Violation
Copper, total	4/30/94				0.619	0.5	24%	30
lron, total	4/30/94	4.35	4.0	9%				11
Nickel, total	4/30/94				1.64	1.0	64%	30
Total Suspended Solids	4/30/94				69	15	360%	30
Total Suspended Solids	4/30/94	69	30	130%				1
Copper, total	5/31/94				0.54	0.5	8%	31
Manganese, total	5/31/94				1.55	1.0	55%	31
Nickel, total	5/31/94				3.42	1.0	242%	31
Total Suspended Solids	5/31/94				27	15	80%	31
Zinc, total	5/31/94				1.83	1.0	83%	31
Manganese, total	9/30/94				9.93	1.0	893%	30
Oil & grease	9/30/94				34.6	15.0	131%	30
Manganese, total	11/30/94				207	1.0	100%	30
Nickel, total	11/30/94				3.81	1.0	281%	30
Zinc, total	11/30/94				1.39	1.0	39%	30
Manganese, total	1/31/95				4.25	1.0	325%	31
Nickel, total	1/31/95				7.96	1.0	696%	31
Zinc, total	1/31/95	•			1.8	1.0	80%	31
Nickel, total	3/31/95				5.35	1.0	435%	31
Manganese, total	3/31/95				2.44	1.0	144%	31

# TABLE OF VIOLATIONS of 1990 NPDES PERMIT Chemetco, Inc. (Storm Water Outfall 002)

Parameter	Date	Reported Daily Max. Violation (mg/l)	Daily Max. Limit (mg/l)	Percent Exceedance (Daily Max.)	Reported 30-day Avg. Violation (mg/l)	30-day Avg. Limit (mg/L)	Percent Exceedance (30-day avg.)	Number of Days of Violation
Zinc, total	3/31/95				2.14	1.0	114%	31
Zinc, total	3/31/95	2.14	2.0	7%				1
Iron, total	5/31/95				4.35	2.0	117%	31
Total Suspended Solids	5/31/95				52	15	247%	31
Total Suspended Solids	5/31/95	52	30	73%				1
Zinc, total	5/31/95				1.13	1.0	13%	31
Copper, total	8/31/95			·	0.51	0.5	2%	31
Manganese, total	8/31/95				6.41	1.0	541%	31
Nickel, total	8/31/95				3.59	1.0	259%	31
Zinc, total	8/31/95				1.81	1.0	81%	31
Manganese, total	3/31/96				8.57	1.0	757%	31
Nickel, total	3/31/96				9.46	1.0	846%	31
Zinc, total	3/31/96				2.96	1.0	196%	31
Zinc, total	3/31/96	2.96	2.0	48%				1
Copper, total	4/30/96				0.567	0.5	13%	30
Manganese, total	4/30/96				7.51	1.0	651%	30
Nickel, total	4/30/96				10.6	1.0	960%	30
Zinc, total	4/30/96				3.72	1.0	272%	30
Zinc, total	4/30/96	3.72	2.0	86%				1
						Total Da	ys of Violation =	1017

Chemetco 1996 NPDES Permit Violations					
Unpermitted Discharge	Date Started	Date Stopped	Days of Violation		
Zinc oxide spill/discharge (via 10" diameter pipe)	9/18/96	9/18/96	1		
Compliance Milestones Past Due	Date Due	Date Completed	Days of Violation		
Completion of Stormwater Pollution Prevention Plan	11/16/96	1/2/97	47		
Conduct annual facility inspection report for storm water (to be submitted to Illinois EPA within 60 days thereafter)	5/20/97	9/26/97*	129		

<sup>\*</sup>Facility's estimated date of compliance

TALLY OF ALL VIOLATIONS (April 1994 - April 1999)				
Category	Days of Violations			
Effluent Violations of 1990 NPDES Permit	1017			
Violations of 1996 Permit	177			
	1194			



# U.S. Department of Justice

# Environment and Natural Resources Division

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# Via First Class Mail & Facsimile

October 22, 2001

Patrick M. Flynn, Esq. Flynn & Guymon 23 Public Sq., Suite 440 Belleville, Illinois 62220-1627 (618) 233-0601 (f)

Re:

United States v. Chemetco, Inc.; People of State of Illinois v. Chemetco, Inc., Civ. No. 00-670-DRH

### Dear Mike:

As we discussed on Friday, October 19, the United States is requesting concurrence from Chemetco to visit its facility on October 30, 2001, during business hours (9 a.m. to 5:30 p.m.). The purpose of the visit would be to inspect the area of the facility referred to as the "Site" on pages 9-10 of the United States' First Requests for Admissions and Second Set of Interrogatories and Requests for the Production of Documents served on September 17, 2001 (and the "Contractors' parking lot" in the State of Illinois' First Request for Admissions) and areas adjacent to it. This inspection, which may include sampling and photography, is to confirm and update information for trial. We expect the following persons to be in attendance that day (and I will let you know as soon as possible if this list changes): myself and Greg Sukys of DOJ; Jeffery Trevino of EPA; David Schulenberg of EPA; Ward Lenz of the Corps; and Jerry Burning of the United States Department of Agriculture.

I am also requesting that Chemetco make available on October 30 and, if necessary, the following day all or substantially all of the documents responsive to the United States' Second Requests for the Production of Documents served on September 17, 2001.

Thank you for your anticipated courtesy and cooperation. I look forward to hearing from you as soon as possible.

# FOR HISTORICAL SLAG AT CHEMETCO, INC.

October 2001

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# **ATTACHMENTS**

Attachment 1	Test Results of Slag and Distilled Water in Drums
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### **Executive Summary:**

Slag produced by Chemetco has been analyzed using various methods to determine metal leachability and whether the slag exhibited the toxicity characteristic of hazardous wastes. Prior to March 1991, the slag was analyzed using the "EP-Tox" method. EP toxicity results for the slag were statistically lower than the characteristic regulatory standards. Chemetco estimates approximately 90% of the volume of the existing slag pile was generated prior to 1991.

Post March 1991, the toxicity characteristic leaching procedure (TCLP) method has been used to determine whether wastes exhibit the toxicity characteristic. The TCLP method is used to simulate conditions of waste disposal at a municipal solid waste landfill. Analytical TCLP results for the slag have exceeded the toxicity characteristic regulatory levels for lead and cadmium. The slag has also been analyzed using the synthetic precipitation leaching procedure (SPLP) method. The SPLP more closely approximates the conditions under which the slag is stored. SPLP results suggest that metals are not readily leachable under more realistic remedial scenarios. Distilled water leaching tests on the slag also indicate that the metals are not readily leachable from the slag.

Potential impacts of the slag to the surrounding environment have been examined. Potential impacts due to fugitive emissions, if any, from the slag pile are not anticipated due to the nature of the slag piles (size of slag pieces, undisturbed pile, and lack of traffic) and the application of a dust suppressant to the pile. Analytical results from soil, sediment, surface water, and groundwater sampling events have indicated that the slag has had limited impact on the environment. Slightly elevated levels of metals are observed in areas that receive direct runoff from the slag pile. Groundwater and Long Lake surface water do not appear to have been impacted by the slag pile.

Potential remedial alternatives for the slag pile include "reuse/recycle" or "on-site residence" of the slag. A variety of reuse/recycle alternatives have been proposed for the slag including use of the slag as a raw material in cement, concrete, and shingle manufacturing. Each of these options would guarantee the slag would never be placed in a municipal solid waste landfill in an unaltered or untreated condition thereby supporting the use of the SPLP test in making remedial decisions. Another unique reuse/recycle alternative is the use of slag as aggregate in asphalt and/or as road construction material al local lined landfill operated by waste management built to Subtitle (requirements.

The "on-site residence" alternative involves using the slag to construct a berm along the perimeter of the northwest and east sections of Chemetco's property along Route 3 and Poag Road. Again, under this remedial alternative the SPLP test could be used to evaluate risk the slag would pose to the environment since the slag would be legally restricted to the Chemetco site and not allowed to be shipped to a municipal solid waste landfill in an unaltered or untreated condition. Chemetco's preference is for use of a "reuse/recycle" alternative.

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### 1.0 Introduction

The purpose of this document is to facilitate the agreement between the parties on remedial alternatives for the slag present on site. While regulatory issues are discussed, the focus of this document is to compile existing environmental information and to outline potential remedies.

The Chemetco facility was constructed in 1969 and commenced production of anode copper, cathode copper, crude lead-tin solder, zinc oxide and slag in 1970. The Chemetco facility is located directly within an agricultural area within a larger industrial corridor along Route 3. The facility is bounded on the west by a major, heavily traveled rail and highway routes and on the south by a limited use secondary road. Chemetco's operations are conducted on an approximately 40 acre secured area within the approximately 240-acre site. The acreage is located in the Southeast ¼, Section 16, Township 4 North, Range 9 West of the Third Principal Meridian, in Madison County.

### 2.0 Background on Slag

Chemetco generates an iron-silicate slag. Historical slag on-site consists of approximately 300,000 cubic yards. The cooled slag is a hard, dense and inert material produced in the secondary copper smelting process. As explained below, Chemetco in 1987 changed its method of handling the molten slag, thus changing the physical characteristics (primarily size) of the solidified material.

Prior to 1987, molten slag was produced in and poured from the top blown rotary converters (TBRC), or furnaces, into a slag pot that was then hauled from the production area to slag cooling pits on the southern face of the present slag pile. The molten material was poured from the Kress slag hauler into one of the four cooling pits whereupon it slowly cooled and solidified. The solidified slag was then broken up as necessary and added to the slag pile. This process produced what has been called "chunky slag". Chunky slag varies in size from sand grains to as much as four inches across or larger.

Beginning in September 1987, Chemetco initiated a modified process which features rapid cooling of molten slag by pouring a narrow stream of molten slag into a high pressure, ambient temperature water spray to produce granulated slag. The granulated slag is run through the Granulated Slag Screening Plant and shipped out for use as granules on asphalt shingles.

### 2.1 Generation

Prior to March 29, 1991, the slag produced by Chemetco was not a characteristic hazardous waste. EP toxicity results for Chemetco slag were statistically less than the characteristic regulatory standards. Slag produced by Chemetco prior to March 29, 1991 never had the designation of "RCRA hazardous waste." Markets for Chemetco slag include shingle manufacturing, cement production, concrete aggregate, and use as road base material.

Slag generated after March 29, 1991 has been analyzed using the TCLP method. Lead and cadmium levels in the slag exceed the TC regulatory levels. Thus if the slag generated after March 29, 1991 is to be disposed, it must be disposed as a RCRA hazardous waste. If the slag is recycled, it does not meet the definition of hazardous waste. The parties disagree regarding what acts constitute disposal in this context.

Given the usage and placement history of the slag at the Site, it is estimated that greater | Colored than 90% of the slag in the nile is pre-March 1991 along than 90% of the slag in the pile is pre-March 1991 slag.

### 2.2. Composition

In the past several years the historical slag has been subjected to leach testing using three (3) different tests; TCLP, SPLP, and distilled water. This section will summarize the data from the tests.

### SPLP and TCLP

USEPA was on-site in May of 1998 to collect samples of various materials and wastes at Chemetco. The facility split samples for a few of the materials. The split samples of slag taken during the May 1998 USEPA sampling event were analyzed by Chemetco utilizing the SPLP method. The analytical results supplied by USEPA for the TCLP analysis and the corresponding SPLP analytical results are included below in Table 2-1.

Table 2-1 Comparison of TCLP/SPLP Results of Slag

Sample No.	Pb TCLP (mg/L)	Pb SPLP (mg/L)
SL-001	18.4	0.894
SL-002	16.6	1.04
SL-003	11.8	0.550
SL-004	15.4	2.28
SL-005	20.5	1.59
SL-006	39.2	1.39
SL-007	56.6	1.62

<b>-</b>		
SL-008	14.6	1.51
SL-009	79.9	2.07
SL-010	27.7	1.18
SL-011	54.4	1.61
SL-012	17.2	0.556
SL-013	43.9	1.88
SL-014	50.6	1.45
SL-015	56.0	1.19
SL-016	21.0	0.440
SL-017	38.2	1.25
SL-018	67.7	3.01
SL-019	37.8	0.869
SL-020	17.0	0.751

(It should be noted that a majority of the 20 samples were of the finer fraction of the slag residing in the pile in the northeast corner of the facility. Chemetco contends the samples are not representative of the slag pile as a whole.)

The orders of magnitude of difference between TCLP and SPLP analytical data led Chemetco to perform additional testing on slag as described below.

Statistical comparisons of lead determination using TCLP and SPLP, in combination with the chemical assay techniques identified as Method 200.8 and Method 6010, analyses were conducted. Those comparisons are supported by the use of an appropriately statistically designed sampling plan.

The statistical design required the collection of three slag samples from a road surface. The object of the investigation was to determine the effect of slag sample leaching and assay procedures on the resulting concentration of leachable lead. Therefore, these

2

samples were taken from convenient road surface locations. Reasonable care was exercised to obtain samples of the slag used in road construction and avoid other road construction material.

The collected sample containing "large" pieces of slag were comminuted with a hammer to reduce any "chunks" to a size amendable to hand mixing. The comminuted sample material was then mixed as well as possible by hand and four roughly equal size aliquots extracted. Each aliquot weighed at least 100 grams to permit application of the appropriate leach extraction procedure.

Each aliquot was assigned a combination of leaching and lead assay procedure as indicated in the following table (Table 2-2). The assignment of each aliquot to procedure combination was performed at random. The resulting statistical design is referred to as "two factor factorial in randomized complete blocks:" The "blocks" are the three physical samples collected from the road.

Table 2-2
Sample Aliquot Procedure Assignment

Combination	Leach Procedure	Assay Procedure
A	Method 1311	Method 6010
В	Method 1311	Method 200.8
С	Method 1312	Method 6010
D	Method 1312	Method 200.8

Although it was not a part of the initial design, the laboratory performed replicate assays for six of the submitted samples. All replicates were for assay Method 200.8, with three being associated with each leaching technique. This provided an unanticipated estimate of the variation associated with the assay method. Comparing this estimate to the "experimental error" from the resulting Analysis of Variance (ANOVA) revealed that the experimental error was not significantly different from the variation associated with the assay technique. Analytical data is included in Table 2-3

Table 2-3
Analytical Data From Slag Road

Sample ID	TCLP Pb	TCLP Pb	SPLP Pb	SPLP Pb
	200.8	6010B	200.8	6010B
01-110899 <sup>1</sup>	19.4	19.5		
04-110899 <sup>1</sup>			0.311	
07-110899 <sup>1</sup>			1.20	1.10
10-110899 <sup>1</sup>	21.6			
02-110899 <sup>2</sup>	5.04	4.60		
05-110899 <sup>2</sup>			0.961	0.890
08-110899 <sup>2</sup>			0.822	
11-110899 <sup>2</sup>	5.02			
03-110899 <sup>3</sup>	13.6			
06-110899 <sup>3</sup>			0.573	
09-110899 <sup>3</sup>			0.593	0.570
12-110899 <sup>3</sup>	19.2	20.3		

<sup>&</sup>lt;sup>1</sup>Sample location 1

Statistical analysis of the data using ANOVA of the resulting data indicated that only the different leaching procedures produced statistically significant differences in lead concentration. This statistical significance is illustrated in the Figure 2-1. Note that a

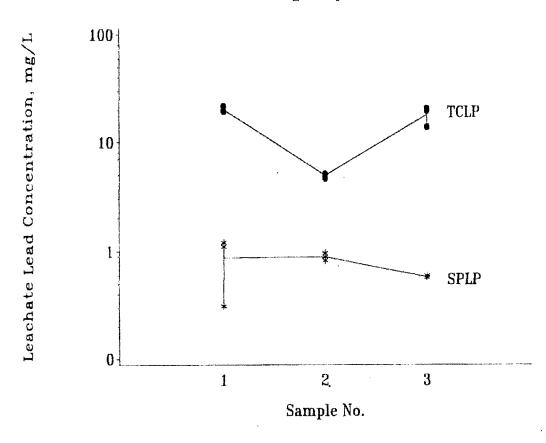
<sup>&</sup>lt;sup>2</sup>Sample location 2

<sup>&</sup>lt;sup>3</sup>Sample location 3

logarithmic scale is employed on the vertical axis of this figure. Thus, the differences between using the TCLP and SPLP procedures are order of magnitude differences in leachate lead concentration. The variation due to other sources is illustrated in this figure as Hi-Lo plots about the sample-leach procedure mean.

Figure 2-1
Statistical Significance of leach Method

Effect Of Sample Leaching Method On Leachate Lead Concentration Farm Road Slag Samples



Because leaching Fluid 1 was used for each of the leaching techniques, the pH of the fluids used is fairly constant (TCLP, 4.9 and SPLP, 4.2). Logically, one is lead to attribute the differences to the type of acid used for leaching, the organic acid used for TCLP versus the morganic acid used for SPLP. Chemetco intends to propose remedial alternatives for the slag that eliminates the prospect that the slag would ever be placed in an untreated or unaltered condition where it would commingle with municipal waste. Thus, the SPLP procedure becomes available to the Parties in making remedial decisions.

### Distilled Water

Slag has been shown to produce a buffering effect in some cases such and during an evaluation of the slag for construction projects in the late 1980's, long term testing was conducted on eleven samples, each sample lasting 28 to 30 days during which distilled water was circulated continuously through 55-gallon polyethylene drums of slag material.

In order to obtain samples for testing Chemetco excavated representative material from slag storage pile and placed the samples in new 55-gallon drums. Each drum and its contents had an average total weight of approximately 850 pounds.

Each drum was then transported to the sample preparation area. The contents of each drum were screened for separation into the following five size fractions: greater than 3"; less than 3" but greater than 1 ½"; less than 1 ½" but greater than 3/4"; less than 3/4" but greater than 3/8"; and less than 3/8". After separation into size fractions through screening, each resulting size fraction was weighed, and this weight was recorded.

From the contents of each drum a 100 pound representative sample was prepared by blending material from each of the size fractions in the same proportion as existed in the full drum sample. Each resulting 100-pound sample was placed in a large polyethylene bag, sealed and transported to the laboratory.

At the laboratory, three samples were initially selected for testing. Each sample was emptied into a clean 55-gallon polyethylene drum. Forty-five gallons of distilled water was added to each drum, and the drum was covered with a polyethylene drum cover. Distilled water was circulated continuously through he drums at an average rate of 2-1/2 gallons per minute. At 7-day intervals a sample of the liquid was drawn for analysis for lead and cadmium. The total testing period for each sample lasted 28 days. The results of the test are shown in Attachment 1.

After the first three samples were tested, the procedure was modified. In the modified procedure, liquid samples were taken each hour of the first 10 hours and then once each day for the next nine days. Further liquid samples were taken 10 and 20 days later. Testing of additional samples conducted following modification of the sampling procedure. In addition to analyzing liquid samples for lead and cadmium, the modified procedure included recording pH and temperature levels. The results of the later testing are also shown in Attachment 1. The distilled water leaching tests continued for a total of 58 days- 28 for the first phase and 30 for the second.

The range of pH during the distilled water-leaching test demonstrates the buffering effect of the slag against acidic conditions and against the leaching of lead and cadmium. The pH for all samples ranged from a low of 6.01 to a high of 10.6 and in only one sample failed to record an upper pH value of less than 7. In most samples the upper pH values were in the 8.9 to 10.6 range. Based on results shown in Attachment 1, it is evident that this buffering capacity contributes to the very low leaching levels for lead and cadmium.

Average concentrations for all samples were 0.691 ppm for lead and 0.043 ppm cadmium.

### 3.0 Environmental Data

This section will evaluate existing data from environmental media potentially impacted by the slag. This section will not summarize all data, as the groundwater data collected to date is voluminous but will reference where most data is found.

### 3.1 Soil/Surface Water

The USEPA obtained soil, surface water, and sediment samples in May 1998 to the east and directly adjacent to the slag and the northeast of the slag. They refer to this area as the "East Runoff Area Soil". Analytical results of the samples located adjacent to the slag and east are contained in the following table. Locations of the samples are in Attachment 2. Since samples were split between Chemetco and USEPA, the table below includes both sets of analytical results. Chemetco analytical results are followed by USEPA analytical results. The prefix SS refers to soil samples, SD refers to sediment samples and SW refers to surface water samples.

Table 3-1
East Runoff Area Soil/Sediment/Surface Water
Total Metal Concentration
Chemetco/USEPA results
(mg/kg)

RCRA	SS-009	SS-010	SS-011	SD-008	SW-008 (mg/L)
Metal				(mg/kg)	
Arsenic	12.3/21.1	8.31/24.1	5.66/13.7	5.63/12.6 U	0.235/0.100 U
Barium	257/265	283/549	256/282	253/313	1.00/0.494
Cadmium	14.4/18.80	9.02/16.00	1.60/4.96	2.16/8.69	0.036/0.0197
Chromium	21.1/14.40	26.0/25.7	23.1/14.8	44.7/23.8	0.140/0.0828
Lead	880/1120	872/2380	388/359	1532/1490	11.3/4.350
Mercury	0.12/0.127 J	0.081/0.191 J	0.051/0.075 J	0.059/0.08 J	.0062/0.00365 J
Selenium	0.56/11.7 U	1.11/15.40	0.19/9.6 U	0.60/12.6 U	<0.5/0.294
Silver	0.62/1.11	0.52/0.70	0.62/0.5 U	0.50/0.08 J	0.026/0.005 U

# Table 3-2 East Runoff Area Soil TCLP Concentration Chemetco/USEPA Results (mg/L)

RCRA Metal	SS-009	SS-010	SS-011
Cadmium	/0.19	/0.12	/N/A
Lead	1.21/1.41	0.69/1.10	0.43/N/A

As stated in the USEPA sampling report, SS-009 and SS-010 were taken near SD-008/SW-008, which contained visible surface runoff form the slag pile. SD samples were sediment samples and SW samples were surface water samples. Fines were present on the surface immediately adjacent to the pile to the east.

Soil samples taken outside the northeast corner of the slag pile (see Attachment 2) resulted in the following analytical results:

Table 3-3
East Runoff Area Soil
Total Metal Concentration
Chemetco/USEPA results
(mg/kg)

Table 3-4
East Runoff Area Soil
TCLP Metal Concentration
Chemetco
(mg/L)

RCRA Metal	SS-012	SS-013
Metal		
Arsenic	4.67/14.1	3.57/10.8 U
Barium	261/250	251/244
Cadmium	0.54/2.95	<0.04/2.12
Chromium	19.9/12.8	19.6/11.1
Lead	167/179	121/124
Mercury	0.040/0.048 J	0.034/0.037 J
Selenium	0.44/9.8	0.23/10.8
Silver	0.50/0.5 U	0.44/0.5 U

RCRA	SS-012	SS-013
Metal		
Lead	0.13	< 0.1
		1

Higher levels in Samples SS-009, SS-010, SS-011, SD-008, and SW-008 as compared to samples SS-012 and SS013 can most likely be contributed to the presence/incorporation of slag fines into the sample and the very close proximity of the sample location to the slag pile.

Chemetoo sampled both the north canal inside the plant and runoff located to the north of the slag pile in the field in 1998. The north canal at that time only received runoff from the slag pile and any local surface runoff. Results of this sampling are included in Table 3-5.

Table 3-5
Runoff Into North Canal and North Field
Total Metal Concentration
(mg/L)

RCRA	NC52098	NSP52098
Metal	(north canal)	(north field)
Arsenic	Not analyzed	Not analyzed
Barium	0.04	0.05
Cadmium	< 0.005	< 0.005
Chromium	0.1	0.1
Lead	0.31	0.10
Mercury	Not analyzed	Not analyzed
Selenium	Not analyzed	Not analyzed
Silver	0.01	< 0.01
Manganese	0.00	0.32
Nickel	0.37	0.16
Copper	0.78	0.53
Iron	1.14	0.84
Zinc	0.38	0.27

Based on previous on-site investigations, the site is underlain primarily by competent clays and silty clays with intermittent sand lenses. Several exploratory exercises have been conducted on the soils located around the outside of the fence surrounding the slag pile to determine the geotechnical, hydrologic and lithologic characteristics of the subsurface. As part of improvements to the storm water collection system, a retention basin was contemplated for residence in the northeastern corner of the property south of Poag Road and north of the fenced facility. Five borings were advanced with no groundwater being encountered at the time of drilling. The borings were terminated at a depth of 20 feet. Primarily, clay to silty clay was encountered in the borings. Some fine sand was encountered past 13 feet below ground surface (bgs).

An additional characterization project was performed in the present location of the storm water retention basin south east of the fence, south of Chemetco Lane. Three borings were advanced to a depth of approximately 20 feet yielding, again, clays and silty clays. Some sand was encountered past 10 feet bgs, otherwise clays to silty clays were encountered. Water was noted in these borings. The area is just to the east of two

shallow sand lenses, one of which has been remediated since 1983 via the Subsurface Interceptor Drainage (SID) system.

A Phase I Groundwater Investigation was performed in the area referred to as the Zinc Oxide Release Area. It is located in the southwest corner of the facility south of Chemetco Lane and east of the truck lot. Laboratory results indicate the clays and silty clays encountered were relatively impervious and exhibited hydraulic conductivities on the order of  $1 \times 10^{-7}$  to  $1 \times 10^{-8}$  cm/s. This aquitard typically ranges between 10 and 60 feet in thickness beneath the Chemetco facility and surrounding areas.

It appears that samples collected by USEPA in 1998 adjacent to eastern side of the slag pile were affected by the localized impact of runoff from the slag pile. Due to the weight of the slag, even the finer particles are not able to travel far from the pile but can be observed adjacent to the fence line. Since the date of the sampling, a surface water collection ditching and piping have been installed along the north and eastern portion of the slag pile to collect this runoff. Additional ditching was installed prior to that just southeast of the slag across Chemetco Lane. All of this collection piping is directed to a 1,000,000-gallon retention basin in the southeast portion of the facility.

### 3.2 Groundwater

### General

The hydrogeology beneath Chemetco is very complex; consisting of several perched sand lenses, a multi-layer regional aquifer and topographic features that produce temporal variations in the flow regime.

Chemetco is located in the floodplain of the Mississippi River in an area referred to as the American Bottoms. The stratigraphy beneath the site consists primarily of two units; an upper clay and silt "aquitard" and the regional aquifer composed of sand and gravel. The aquitard consists of low permeability silts and clays interbedded with discontinuous sand and silt lenses that contain perched "shallow" water above the regional aquifer. The regional aquifer consists of two zones referred to as the upper and lower regional aquifers. The upper zone consists primarily of fine sand with some gravel and silt. The lower zone is comprised mainly of coarse sand and gravel. Stratigraphic sections developed from soil boring data collected at the site are provided inAppendix 3-1 of the Modification to Section 3 of the 1998 Closure/Post Closure Plan that was submitted to the Illinois EPA in March of 2000. A more detailed description of the regional geology and hydrogeology of the site can be found in Chemetco's Hydrogeologic Summary prepared by ENSR, January 1991.

Chemetco currently monitors three hydrogeologic zones: the perched "shallow" aquifer, the upper regional aquifer and the lower regional aquifer. The perched and regional aquifers beneath the facility meet the definition of a Class I aquifer under 35 Illinois Administrative Code, Part 620.

Static groundwater measurements indicate that groundwater elevations within the perched "shallow" aquifer are at significantly higher elevations than the water elevations in the regional aquifer. Profiles of the potentiometric surfaces within the perched and regional aquifers are provided in Attachment 3. The groundwater elevation data presented in this profile represents the typical range of water surface differences between the perched "shallow" aquifer and the regional aquifer. The relative position of the potentiometric surfaces, and the stratigraphic location of the sand lense demonstrate that it is in fact "perched" above the regional aquifer. This indicates that the two units are hydraulically separate, and for that reason are considered as separate hydrogeologic zones for monitoring purposes.

Numerous hydraulic conductivity tests have been conducted on the different strata and are included in the table below: The testing in Table 3-6supports the above hydrological description of the units identified

Table 3-6
Hydraulic Conductivity Summary

Date/Location	Field/lab	Result (cm/sec)	Zone
5 wells	Slug sests field 2.2x	10-2	Perched
3 wells	Slug tests-field	Ave. 4.6X10-5	Aquitard
3 wells	3.0×140 8, 1.5×10	7, and	Aquitard
	8.0X10	-9	
11 wells	Sluggestsoffeld 1.2X	10-2	Regional
			Aquifer
1989-East	Pump test 6.4X10	-2	Lower
Water Supply			Regional
Well			Aquifer
1990-Pumping	Pump test 1.4X10	<b>)-2</b>	Upper
Well B			Regional
			Aquifer
1990-West	Pump test 1.2X10	<sub>)</sub> -1	Lower
Water Supply			Regional
Well			Aquifer

Groundwater sampling began at Chemetco in the 1980's, and has been sampled consistently on a quarterly basis since 1992. The slag pile has been present for some time in it's current location, at least 20 years or more. Results of an extensive groundwater evaluation demonstrate that there has been no impact to the groundwater that can be attributed to the slag pile. A modification to Section 3 of the 1998 Closure/Post Closure Plan was submitted to the Illinois EPA in March of 2000. Information in this section has been taken from the modification and the latest semi-annual groundwater assessment

report dated July 2001.

The data in this report is not in any way complete as Chemetco has been monitoring groundwater consistently for almost ten years. Additional sampling data is discussed in the Section 3 Modification dated March 2000. Additional data was also included in the Revised Groundwater Monitoring Program dated October 1997 and submitted to the Illinois EPA. This report is focusing on the most recent evaluation with relation to the upgradient wells installed in 1997. Over thirty-one quarters of groundwater monitoring data has been collected consistently between 1992 and 1999. In addition, monitoring was conducted prior to 1992. The Current monitoring system is identified in Table 3-7 and well locations are indicated in Figure 3-1.

A Phase I Groundwater Investigation was performed in the area referred to as the Zinc Oxide Release Area. It is located in the southwest corner of the facility south of Chemetco Lane and east of the truck lot. The investigation consisted of advancing six borings to a depth of 24 feet to evaluate if the "aquitard" contained discontinuous sand and silt lenses that hold perched "shallow" groundwater above the regional aquifer. No discontinuous sand and silt lenses were encountered in any of the six borings advanced to a depth of 24 feet. Groundwater was not encountered in any of the six borings advanced. Two samples were collected for ex-situ hydraulic conductivity using ASTM method D698/D5084(4) from borings B-61 and B-62 at a depth of 12 to 16 feet below ground surface. Laboratory results indicate the clays and silty clays are relatively impervious and exhibit hydraulic conductivities on the order of 1 x  $10^{-7}$  to 1 x  $10^{-8}$  cm/s. Beneath the zinc oxide spill area the aquitard is on the order of 50 to 60 feet in thickness as evidenced by the boring logs from former monitoring wells MW-11 and MW-20 previously advanced in the area of the zinc oxide spill. The cross sections prepared from the results of the Phase I Groundwater Investigation are consistent with the geologic profile of the area previously prepared by ENSR in 1989 through 1991.

Table 3-7 Groundwater Monitoring Wells Chemetco, Inc.

AQUIFER	ZONE MONITORED	WELLS USED FOR GROUNDWATER SAMPLING	WELLS USED FOR GROUNDWATE RR ELEVATION
	Western Sand (PA)	31A	31A
Perched "Shallow" Aquifer (PA)		-	
	Western Sand (PA)	54	54
	Western Sand (PA)		25
	Eastern Sand	19R ·	19R
	Eastern Sand	29	29
	Eastern Sand	41	41
	Transition Zone		12
	(PA) South of SID	16	16
	(PA) South of SID	27	27

	(PA) South of SID	28	28
	Downgradient	56	56
			26
Unner Degional			
Upper Regional Aquifer			
			33
			32R
		37R	37R
		38R	38R
		44R	44R
		47R	47R
		48	48
			49
		50	50
·	Background	51	51
		55	55 .

		36R	36R
Lower Regional Aquifer			
		39R	39R
		43	43
			46
	Background	52	52
		53	53

### Shallow Perched Aquifer

A linear regression trend analysis was conducted on the shallow groundwater monitoring data gathered and supplied to the Agency in the 2000 modification. Results of linear regression trend analysis for wells in the vicinity of the perched "shallow" aquifer show an impact to groundwater quality within the perched "shallow aquifer". A summary of the trend analysis is in included in Table 3-8 Due to its character, contaminants, and the subsurface configuration, the contamination encountered in the shallow aquifer is clearly from the former acid wash impoundment, not the slag. Additional investigation was proposed in the 2000 modification.

### Regional Aquifer

Establishment of background concentrations for arsenic, cadmium, chromium, copper, lead, tin, nickel, zinc, specific conductance, pH, TOC and TOX in the upper and lower regional aquifers was completed in 1998. The former background wells had been questionable and replaced in 1997. Statistical analysis was conducted using groundwater analytical data obtained from wells screened in the regional aquifer during sampling events occurring between July 1997 and October 1999. Statistically significant exceedances of background values for specific conductance were detected in various monitoring wells within the upper and lower regional aquifer. In addition, statistically significant exceedances of background values for total organic carbon (TOC) were found to exist in the vicinity of monitoring well MW-55, in the upper regional aquifer and statistically significant exceedances of background values for total organic halogens (TOX) were found to exist in the vicinity of monitoring well MW-39R, in the lower regional aquifer. No other monitoring wells exhibited statistically significant exceedences of these two parameters. Summary tables are included as Table 3-9. Additional investigation was proposed in the 2000 modification

### 4.2.2. Capped Foundation

The preliminary conceptual design and earthwork calculations for the berm described above, could also be applied to on-site residence of the slag

The slag would be utilized to fill areas to the north and east of the present fenced portion of the facility. The slag would be used to bring the elevation of the surrounding field to meet the elevation of the fenced facility. The slag would then be either sealed with concrete or a clay cap similar to that designed for the berm. Those portions of the slag that were sealed with concrete cap would be utilized for possible expansion of the plant or activities related to the plant. An inspection program with a corrective action element would be utilized to insure that the concrete is adequately maintained.

Although the slag foundation would not utilize additional liner material, the clay in the area that is already quite substantial would be further compacted by the weight of the slag. This compaction would resemble the compaction for a clay liner. Such compaction will only further enhance the protection of groundwater beneath the site. If sand stringers were encountered in the field they would be replaced by clay (similar to landfill construction practices).

### 5.0 Conclusion

Chemetco generates an iron-silicate slag. Historical slag on-site consists of approximately 300,000 cubic yards. Although its residence time on-site has been over 20 years, its impact to the environment appears to be localized to the surficial soils adjacent to the pile to the east. The impact appears to be due to storm water run-off and a storm water run-off collection ditch has been installed surrounding the slag pile to north and east.

As the slag sits, it is not exposed to the leaching of acetic acid present in a worst-case scenario involving a putrescible waste landfill that the TCLP tests attempts to mimic. The SPLP tests simulates acid rain and results in a more realistic picture of the leaching potential of the slag as it presently sits in the environment.

The U.S. Congress, in the 1998 Transportation Equity Act for the 21st Century, established the Recycled Materials Resource Center (RMRC) at the University of New Hampshire (UNH). Although a good deal of U.S. research appears to be on the reuse of GGBF slags and fly ash, a great deal of research is being done internationally on alternative and beneficial reuses of recovered materials, wastes and byproducts for use in construction materials. In addition, alternative leaching models/tests have been and are being researched internationally.

Chemetco would like to work with the Agencies and proceed with additional testing on products utilizing the copper slag such as cement, concrete and asphalt. The beneficial reuse of Chemetco's copper slag is possible, realistic and should be encouraged. Chemetco believes that the copper slag can be recycled in useable products that can be safely utilized in the environment resulting in no risk to human health or the environment.

earthwork calculations for a slag berm that could potentially be constructed around the perimeter of the northwest and east sections of Chemetco's property along Route 3 and Poag Road. The conceptual design consists of a berm in cross-section 25 feet high, top of berm width of approximately 8 to 10 feet, berm slope of 2 horizontal to 1 vertical, and a clay cap thickness of greater than 1 foot. This berm could utilize up to 250,000 cubic yards. The berm alignment would range between approximately 4,000 and 4,500 linear feet.

Although the berm would not be lined, the clay in the area that is already quite substantial would be further compacted by the weight of the slag. This compaction would resemble the compaction for a clay liner. Such compaction will only further enhance the protection of groundwater beneath the site. A cross-section of the berm is included in Figure 4-1 and the location is indicated on Figure 4-2.

or roads in a local landfill.

### Aggregate in Asphalt

The chunky slag without screening or crushing is classed as a coarse aggregate by IDOT. The size and gradation of material in the slag pile was reviewed by IDOT and found to be acceptable for construction purposes (see September 26, 1986 letter from Thomas McCarthy, IDOT District 8 Materials Engineer, Attachment 6) based on those criteria. IDOT's definition of coarse aggregate also includes slag from the combustion of coal in wet bottom boilers, as well as air-cooled blast furnace slag. Air-cooled blast furnace slag is defined as consisting essentially of silicates and alumino-silicates. While not identical in composition, the chunky slag does share some characteristics with the blast furnace slag (viz., high (30-35%) silicate content, iron content, and slow, air-cooled method of solidification.

If the chunky slag was screened, or crushed sufficiently and screened, it could likely be classified a fine aggregate by IDOT (see February 9, 1988 letter from IDOT, Attachment 6). As a fine aggregate, the slag would be useful not only as fill but also as feed material for either asphaltic or concrete mix products.

IDOT completed freeze-thaw testing on the slag, and found it acceptable up to a size rating of one-inch for use in concrete paving (see May 24, 1988 letter from IDOT, Attachment 6). Both wet bottom boiler slag and air-cooled blast furnace slag are also acceptable and have been used in these applications, provided size and grade specifications are met.

Although sizing requirements prohibit the use of very large portions of slag, with proper crushing and screening this usage represents a significant potential marketplace. An added benefit to such usage is the binding of slag in a concrete like matrix, minimizing potential leaching of metals content, particle distribution via air or direct contact.

According to the USDOT's "Guidelines for Waste and Byproduct Materials in Pavement Construction", copper slag has been used for years as granular base in mining roads, demonstrating satisfactory performance under severe traffic and operating conditions. In Michigan, reverberatory copper slag is considered to be a conventional aggregate and is covered by state specifications for granular base. Nickel slags are utilized in Ontario, Canada, and phosphorous slag is used in Montana. Copper slags result in good granular bases due to their high stability and good drainage as well as good resistance to freeze-thaw exposure and mechanical degradation. Non ferrous slags have also been reportedly utilized in land reclamations in Japan as fill and as granular base for floor slabs in buildings in the UK.

### Landfill

A local landfill has also expressed interest in use of slag between the 1" to 3" size. Waste Management has stated that they would like to utilize the material for road construction on interior roads inside of a lined facility. The letter is included in Attachment 7

### 4.2. Alternative 2 – On-Site Residence

### 4.2.1. Capped Perimeter Berm

Chemetco has hired Geotechnology, Inc. to work on a preliminary conceptual design and

- Unit weights and voids
- Absorption and surface moisture

Copper slag displays many physical properties that lend themselves for use as a concrete aggregate. The unit weight of copper slag is normally higher than conventional aggregate. As a general rule, the specific gravity will vary with iron content, from a low of 2.8 to as high as 3.8. The adsorption of the material is typically very low (0.13 %). Granulated copper slag is more porous and therefore has lower specific gravity and higher absorption than air-cooled copper slag. The granulated copper slag is made up of regularly shaped, angular particles. As for the mechanical properties that encourage the use of copper slags as an aggregate include excellent soundness characteristics, abrasion resistance and good stability (high friction angle due to sharp, angular shape).7

In the letter dated July 15, 1988, from the Illinois EPA to Chemetco affirming that the slag was not a RCRA hazardous waste, the Illinois EPA stated that they reviewed a document entitled "Justification for the Use of Secondary Copper Smelting Slag in Construction Projects" submitted by ERT under a cover letter dated June 2, 1988. In the letter to Chemetco, the IEPA stated, "...incorporation of the slag into a solid matrix-like concrete should result in minimal leaching of lead and cadmium and is, therefore, the Agency's preferred off-site use of slag." (Attachment 5)

#### Concrete performance utilizing slag

Chemetco owns a subsidiary that makes concrete. Based on the aforementioned letter, Chemetco utilized slag in concrete panels. Testing at an outside lab was performed on the resulting concrete for compressive strength, etc. Testing of the concrete utilizing copper slag as an aggregate confirmed the conclusions in many of the studies in the literature. The compressive strength of the concrete was improved. Additional testing typical for concrete was performed to insure that the concrete produced met industry standards. The test results indicate that the use of slag as an aggregate was successful. Since the concrete plant has been inactive for a number of years, records have been difficult to locate. Those involved in the project do recall having samples sent out for leachability testing but results of those tests have not been found to date. Since a number of the concrete panels are still located at the concrete plant, Chemetco would propose to obtain core samples from some of the panels to run leachability tests. This data would indicate the performance of the aged concrete. Chemetco would also propose a pilot study consisting of a series of batches utilizing the slag with testing of the product for leachability using SPLP and TCLP along with standard industry testing.

#### 4.1.3. Shingles

Currently generated slag is granulated by the application of an ambient, high-pressure stream of water to slag in its molten state. The slag is then run through the permitted Granulated Slag Screening Plant. This plant produces three sizes of slag: oversize, product, and fines. The oversize slag is run back through the plant and the fines are recycled on-site. The slag that falls within the product size specifications are then loaded into railcars and sent to a roof shingle manufacturer.

The slag is utilized as granules on the asphalt shingles. Manufacturers like the copper slag due to its weight and durability, which in turn aid the completed shingle in its life, and durability.

#### 4.1.4. Other Uses

Several additional uses are contemplated such as its use as aggregate for paving material

slag, which have cementitious or pozzolanic properties, should be used as partial or full replacement for Portland cement. Such use of slags exhibit higher strengths, denser structures and better durability compared to Portland cement.5

The use of GGBF slag and fly ash in cement and concrete are encouraged by USEPA pursuant to the Comprehensive Procurement Guideline program. This program was developed to promote the use of materials recovered from solid waste. USDOT also has studied the use of GGBF slags and has determined the benefits were as follows:

- Improves workability and decreases water demand;
- Setting times of increase as the slag content increases which can be beneficial in some situations such as large pours and hot weather;
- Rate and quantity of bleeding in concrete containing slag or slag cements is usually less than concrete containing no slag;
- Long-term compressive strength is increased;
- Decreases porosity; and,
- Relative durability factors greater than 91% in freeze-thaw tests.

The slag was being evaluated for use in construction projects for the Illinois Department of Transportation (IDOT). The Bureau of Materials and Physical Research placed a moratorium on any possible use of copper slag in part based on IEPA's suggested caution of potential hazardous leachates. IEPA did indicate that the slag might be used in portland cement concrete.

The potential for use of the slag as a feedstock to cement plants is apparent but has not been aggressively pursued due to the status of the pile with the regulatory agencies. As discussed above, copper slags or iron-silicate slags, have been shown to provide tangible added benefits to cement production. In addition, the process would stabilize any lead in the slag. Chemetco has discussed and met with representatives in the cement industry regarding the use of the slag as a feedstock. The cement industry is allowed to accept materials with lead and monitor their emissions to insure they meet permit requirements/regulatory standards. Although they may have concerns with lead, they can and do accept materials with lead. Chemetco's slag would be able to be substituted for current feedstock dependent on the price, amount available, etc. If the Agencies view this proposed beneficial reuse as warranting merit, Chemetco would like to pursue a pilot study in conjunction with a cement company that utilizes the historical slag.

#### 4.1.2. Concrete

#### General Background

The essential ingredients in concrete are aggregate, cement and water. According to the Portland Cement Association, "...aggregates need to be clean, hard strong particles free of absorbed chemicals or coatings of clay and other fine materials that could cause the deterioration of concrete in order to create a good concrete mix." Aggregates, which account for 60 to 75 percent of the total volume of concrete, are divided into two categories. Particles passing through a 3/8-inch (9.5mm) sieve are categorized as fine aggregates whereas coarse aggregates are any particles greater than 0.19-inch (4.75mm). They can range from 3/8 to 1.5 inches in diameter. The following characteristics are considered when considering the use of a material for aggregate 66:

- Grading
- Durability
- Particle shape and surface texture
- Abrasion and skid resistance

Type GU	General Construction
Type HE	High-early strength
_	cement
Type MS	Moderate sulfate
	resistant cement
Type HS	High sulfate resistant
	cement
Type MH	Moderate heat of
	hydration cement
Type LH	Low heat of hydration
	cement.

There are no restrictions as to composition and the manufacturer can optimize ingredients such as the pozzolans and Types IP and IS blended cements.

#### Recovered Materials in Cement

Coal fly ash and ground granulated blast furnace (GGBF) slag are two currently recovered materials that are accepted, even by the USEPA, for incorporation into cement and concrete. GGBF slags are in the family known as fayalite slags. Fayalite (FeSiO2) slags are iron silicate slags. GGBF slag contains more calcium than Chemetco's copper slag that makes the GGBF slag a bit softer. In addition, the array of impurities or metals may vary between GGBF slag and Chemetco's slag. The physical characteristics such as specific gravity, shape, etc., of the two slags, copper slag and GGBF slag, are similar. Also similar to GGBF slag, copper slag is pozzolonic in combination with water and cement. In reviewing the composition of Chemetco's slag, the summation of three oxides (CaO=SiO2+FeO) exceeds the 70 percent which is a requirement of pozzolanic activity.2 Such reactions were verified through a treatment study performed on slag fines in 1997 by CSD3. Results of that study showed that the addition of solid Portland cement to the fines yielded nondetectable results when the fines were then subjected to TCLP testing. Portland cement and cement kiln ash are common materials utilized for stabilization/solidification in clean-ups of heavy metal contaminated sites. It is also utilized in the stabilization of soils left in place.

There have been a number of studies utilizing copper slag as an ingredient in cement as well as concrete. Although, many of the studies have been performed in other countries, a number of studies have been performed in the southwest due to the large amount of copper slag available in that area of the country. Approximately 45% of copper slag is utilized in Canada as base construction, railroad ballast and engineered fill, whereas in the United States, copper slag does not appear to be as effectively utilized.2

Pursuant to a study performed by Mobasher, Devaguptapu, and Arino, the effects of copper slag on the hydration of cement based materials results in a significant increase in the compressive strength for up to 90 days of hydration and decreases capillary porosity resulting in the densification of the microstructure.

"This study points out the beneficial aspects of using copper slag as a pozzolanic material. Copper slag is shown to significantly increase the compressive strength of concrete mixtures. Pozzolanic reactions are verified by means of XRD techniques. Use of lime as a hydration activator was evaluated and shown to improve the rate of strength gain. Results obtained from this study indicate the tremendous potential of copper slag as a mineral admixture.4

Additional studies have been performed that show that industrial slags, including copper

Type IIIA	Air-entraining, high-early-strength cement	
Type IV	Low heat of hydration, develops strength at a slower rate	Ideal for use in dams, other massive structures where there is little chance for heat to escape
Type V		Used only in concrete structures that will be exposed to severe sulfate action.

Cement producers already utilize a variety of slags and other recyclables as raw material in blended hydraulic cements. Blended hydraulic cements are produced by intimately blending two or more types of cementatious material. Blending materials consist primarily of Portland cement, ground granulated blast-furnace slag (GGBF slag), fly ash, natural pozzolans and silica fume. Blended cements conform to requirements in ASTM C595 (Table 4-2) or C1157 (Table 4-3). A pozzolan is defined as "a siliceous or siliceous and aluminous material which in itself possess little or no cementing property, but will in a finely divided form and in the presence of moisture chemically react with calcium hydroxide at ordinary temperatures to form compounds possessing cementitious properties."

Table 4-2 ASTM Blended Cement, ASTM C595

ASTM C595	Name	% recovered materials	% pozzolan content
Type IS	Portland blast-furnace slag cement	25 – 70	
Type IP and P	Portland-pozzolan cement		15-40
Type S	Slag Cement	>70	
Type I (PM)	Pozzolan modified portland cement	,	<15
Type I (SM)	Slag modified Portland cement	<25	

These types of blended cements may also be designated as air-entraining, moderate sulfate resistant, or with low or moderate heat of hydration.

Table 4-3 **ASTM Blended Cement, ASTM C1157** 

ASTM	Name
C1157	

encouraging. Elevated levels in ambient air quality have been investigated and no relation to the slag pile has been observed or has been indicated

#### 4.0 Remedial Alternatives

#### 4.1 Alternative 1 - Reuse/Recycle

#### 4.1.1. Cement

#### General Background

Portland cement, the fundamental ingredient in concrete, is a calcium silicate cement made with a combination of calcium, silicon, aluminum, and iron. Generally, virgin raw materials consist of combinations of limestone, shells or chalk, and shale, clay, sand, or iron ore. Pursuant to the Portland Cement Association, the raw materials are reduced to 5-inch size (125-mm) and then to 3/4-inch (19-mm). When the materials arrive at the cement plant they are proportioned to create a cement with a specific chemical composition. The two different methods of manufacturing Portland cement are wet and dry. If the dry method is utilized, the dry raw materials are proportioned, ground to a powder, blended, and then fed into a kiln. The wet process utilizes a slurry that is formed by adding water to the properly proportioned raw materials. The grinding and blending is performed with the materials in a slurry form. The mixture is then fed into the upper end of a tilted rotating, cylindrical kiln after blending. The kilns rotational speed and angle are controlled while the mixture passes through the kiln. Temperatures reach between 2600 and 3000 degrees F inside the kiln, which produces a series of chemical reactions that cause the materials to fuse and create cement clinker. The cement clinker is a marble-sized grayish-black pellet. It is transferred to coolers that bring it down to handling temperatures. The cooled clinker is then combined with gypsum and ground into a fine powder.

There are different types of Portland cement. The American Society for Testing and Materials (ASTM) Specification provides for eight (8) types of Portland cement.

Table 4-1
ASTM Portland Cement Categories

ASTM Type of Portland Cement	General Characteristics	Uses
Туре І	General Purpose	Buildings, bridges, floors, pavements, precast concrete products
Type IA	Similar to Type I w/addition of air-entrained properties	
Type II	Generates less heat at a slower rate, moderate resistance to sulfate attack	
Type IIA	Identical to Type II, produces air-entrained concrete	
Type III	High-early-strength cement, causes concrete to set and gain strength rapidly Chemically and physically similar to Type I, except particles are ground finer	

1992	4	<u> </u>	X
1993#	1		
1993#	2		1
1993	3	X (1.57)	-
1993	4	X	
1994	1		X
1994	2	X	
1994	3	X	
1994	4	X	
1995	1	X	
1995	2	X	
1995	3	X	
1995	4	X	
1996	1	X	
1996	2	X (1.67)	
1996	3		X
1996	4.		X
1997	1		X
1997	2		X
1997	3		X
1997	4		X
1998	1		X
1998	2	X (1.71)	
*1998	3		X
1998	4		X
1999	1		X
1999	2		X
1999	3		X
1999	4		X
2000	1		X
2000	2		X
2000	3		X X X
2000	4		X
2001	1		X
2001	2		X X
2001	3		X

<sup>\*</sup>New northern monitor locations #Reports not readily available

Most failures of the NAAQS were due to the failure of the northern monitor which prior to the 3rd quarter 1998 was located adjacent to and to the north of the scrap yard. In addition, it was located in essentially a wind tunnel between the zinc oxide bunker and the granulated slag load out area. Very large differences between the co-located samplers, which were only five foot from one another, were consistently observed. Once the additional acreage was purchased to the north of the fence line, the northern monitor was relocated to a site that is more representative of the ambient air that the facility is trying to monitor.

Fugitive dust control measures have been ongoing for some time related to the slag pile. Pursuant to the approved Fugitive Emission Control Plan, such application of Coherex should provide a 95% control efficiency factor. In addition, ambient air monitoring results to the east and north are

Pi = erosion potential corresponding to the observed (or probable) fastest mule of wind for the ith period between disturbances, g/m2

 $P = 58(u^*-ut^*)2 + 25(u^*-ut^*)$ 

P = 0 for  $u^* < ut^*$ 

u\*= friction velocity, m/s

ut\* = threshold friction velocity, m/s

- 1) From Table 13.2.5-2 of AP-42: ut\* = 1.33 m/s (material most similar to expected at Chemetco)
- 2) Fastest mile of record: 45 = 20 m/s (from wind speed data recorded at Chemetco site)
- 3) Correct height of an emometer from 7 m to 10 m: u10+ = u7+ [ln(10/0.005)/ln(7/0.005)]

$$u10+ = 1.05 u7+ = 21 m/s$$

- 4)  $u^* = 0.053 \text{ u} \cdot 10 + \text{(width of pile >> height)}$  $u^* = 1.11 \text{ m/s}$
- 5)  $u^* < ut^*$ ; therefore, P = 0
- 6) Emissions = 0 lb/day

The total area of processed and unprocessed slag is approximately 12.92 acres. The control method utilized is the application of petroleum resin emulsion dust suppressant with a resulting control efficiency of 95 %.

The location of the monitoring sites is depicted in Attachment 4. The co-located samplers, N3 and N3QC were relocated in July of 1998. Chemetco believed that all data collected from N3 and N3-QC at their former location just south of the facility's northern fence was highly questionable and not valid. As evidenced by an analysis of quarterly ambient air monitoring, the monitors in their former location had been significantly impacted by nearby facility activities, structures, microclimatic influences, and/or surrounding entrained materials. The IEPA agreed with Chemetco regarding the need to relocate the northern monitors as outlined below.

Chemetco requested in a letter dated June 18, 1998, to IEPA to move the co-located ambient air monitors located in the northern portion of the facility in order to obtain samples that truly represent ambient air. The relocation was approved by IEPA in a letter dated June 24, 1998. Sampling of the ambient air monitors in the new location was initiated July 25, 1998. Additional sampling events were scheduled that same week to allow the collection of the appropriate number of samples for the third quarter 1998. Sampling proceeded as scheduled in the current location until the new monitors were in place. The aforementioned relocation of the northern ambient air monitors has allowed the collection of a more representative sample of ambient air similar to that collected by the ambient air monitors OS and O3.

Table 3-11
Quarterly Ambient Air Reports

Year	Quarter	Fail	Pass
1991#	2		
1991#	3		
1991#	4		
1992#	1		
1992#	2		-
1992#	3		

Although results of liner regression trend analysis demonstrate an impact to groundwater quality within the perched "shallow aquifer", the source of this impact is clearly the historic acid wash impoundments located in the southeast corner of the facility. The character, contaminants, and subsurface configuration support such a conclusion. As for the regional aquifer, the main statistical exceedances appear to be for specific conductance. Chemetco has proposed to perform further analysis and collection of background for additional constituents that may contribute to these exceedances. If the slag were significantly contributing to regional groundwater contamination, it would be assumed that lead would show continuous statistically significant increases when compared to background. Lead was detected in the upgradient well (MW-51) above the 35 IAC 620.410 standard as well as several other upper regional wells. It does not appear that the slag pile has affected the regional aquifer.

#### 3.3 Air/Fugitive Dust

Ambient air monitoring at the Chemetco facility site began with the second quarter of 1991 and following IEPA approval of the monitoring plan and will continue until Chemetco has shown three (3) consecutive years of compliance with the National Ambient Air Quality Standards for lead and particulate. Sampling for lead and particulate is performed on an every sixth day basis. In addition, wind speed, wind direction, wind direction standard deviation (sigma), temperature, relative humidity and precipitation will be monitored.

The locations were chosen based on the modeling report done by Versar, Inc., as areas likely to be higher in emissions from the foundry. Site area characteristics related to the impact on ambient air quality due to emissions from the Chemetco plant include wind flow, rural/urban classification and topography. Pursuant to the Versar report, the prevailing wind direction is from the south occurring approximately 14.5% of the time. The 5-year average wind speed, independent of wind direction, is 10.12 knots (5.20 meters per second). Rural land use types comprise greater than 50 percent of the area contained within a 3-km radius circle surrounding the Chemetco plant; thus, rural dispersion coefficients were used in the air quality dispersion model. Since terrain elevations within a 3 kilometers radius of the plant are at, or below the elevation of the plant, topography will not be an important factor in the transportation and dispersion of air pollutants. As a consequence, terrain elevations were not included in the air quality dispersion model analysis. The slag pile is considered a fugitive emission source.

The potential emissions, if any, from the slag pile are contemplated in the Open Fugitive Emission Dust Control Plan dated March 2001 as well as the previous versions of the Plan originally developed in 1993. The historical slag located on the eastern side of the plant is surface coated with a petroleum resin emulsion dust suppressant (Coherex) to control particulate emission. Based on the nature of the piles (mostly large rock, undisturbed, no traffic) and the formation of a surface crust due to the application of dust suppressant, a control efficiency of 95% is expected. This expected control efficiency is consistent with the average control efficiency achieved for the application of petroleum resin emulsion dust suppressant to paved roads. Calculations from the Plan are as follows:

**Existing Slag Storage** 

E = k Pi, g/m2 (for I = 1 to N)

(AP-42, Section 13.2.5, 1/95)

Variables and Emission Factor Calculation K = particle size multiplier (unitless) (k = 1 for PM30) N = number of disturbances per year



## U.S. Department of Justice

#### Environment and Natural Resources Division

Gregory L. Sukys Environmental Enforcement Section P.O. Bax 7611 Washington, DC 20044-7611 Telephone (?02) 514-2068 Facsimile (203) 616-6584

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## Via Facsimile and Federal Express Priority Overnight

September 17, 2001

Patrick M. Flynn, Esq. Flynn & Guymon 23 Public Sq., Suite 440 Belleville, Illinois 62220-1627 618-233-0601 (facsimile)

John Cowling, Esq.
George M. von Stamwitz, Esq.
Armstrong Teasdale
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
314-621-5065 (facsimile)

Re: United States v. Chemetco, Inc.; People of State of Illinois v. Chemetco, Inc., Civ. No. 00-670-DRH (S.D. Ill.)

Dear Mr. Flynn, Mr. Cowling, and Mr. von Starnwitz:

Enclosed please find additional discovery requests for this matter on behalf of the United States. The bulk of these discovery requests relate to the area of fill at Chemetco's facility often referred to as the parking lot.

Please consider the Requests for Admissions as additional matters for stipulations, a subject matter that we will be discussing in the conference call this Friday, September 21, at 10 a.m. central time / 11 a.m. D.C. time. Also during that conference call, I understand that we will formalize our previously agreed-upon extension of time to complete fact and expert discovery (of at least a month), as well as further discuss bifurcating this matter (both for discovery and trial) into liability and relief phases.

We also will be responding in writing very soon to Defendant's First Interrogatories and Defendant's First Request for Production of Documents. We ask that you also commit to responding in writing very soon to the United States' First Set of Interrogatories and Requests for Production of Documents. We can discuss the timing of these responses during the conference call.

Should you wish to discuss any of these or other issues prior to September 21, please do not hesitate to call either of the undersigned (at the numbers set forth above).

Sincerely,

Andrew & Doyle Gregory L. Sukys

cc:

James Morgan, Esq.
AUSA Gerald Burke
John Cowling, Esq.
George von Stamwitz, Esq.
Jeffery Trevino, Esq.
Thomas Martin, Esq.
Chris Perzan, Esq.

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois,

Plaintiffs,

v.

Civ. No. 00-670-DRH (consolidated with 00-677-DRH)

CHEMETCO, INC.,

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# UNITED STATES' FIRST REQUESTS FOR ADMISSIONS AND SECOND SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff, the

United States of America, hereby serves the following first Requests for Admissions, and second set of

Interrogatories and Requests for the Production of Documents on Defendant Chemeteo, Inc.

("Chemeteo" or "Defendant").

## GENERAL INSTRUCTIONS

For the purpose of these Requests for Admission, Interrogatories, and Requests for Production of Documents (collectively "Discovery Requests"), the following instructions apply.

- A. These Discovery Requests cover and relate to all information and documents which are in your possession, custody or control, or in the possession, custody or control of any of your directors, trustees, officers, employees, agents, servants, attorneys and assigns.
  - B. Each Request for Admission shall specifically be admitted or denied.

- C. If a matter contained in any Request for Admission cannot be admitted or denied, the reasons for this shall be set forth in detail in your Response to the Request for Admission.
  - D. A denial shall fairly meet the substance of the requested admission.
- E. When good faith requires you to qualify your answer or deny only a part of the matter for which a Request for Admission is requested, you must specify the portions of the Request that you admit and then deny or qualify your answer as to the remainder.
- F. Though you may consider a matter of which an admission is requested to present a genuine issue for trial, you may not on that ground alone, object to a request.
- G. When an individual interrogatory calls for an answer that involves more than one piece of information, each part of the answer is to be clearly set out so that it is understandable.
- H. When asked to identify any person, or the source of the information you provide is a person, provide the following information:
  - 1. if the person is a natural person, list the person's:
    - (a) full name;
    - (b) current business and residence address;
    - (c) current employer's name and address;
    - (d) all positions held with Defendant and dates in such positions; and
    - (c) business and residence phone numbers.
- 2. If the person is a corporation, partnership or other entity (other than a natural person), indicate:
  - (a) the type of entity;

- (b) the state and county of incorporation or organization, if any; and
- (c) the address of the entity's headquarters and principal offices.
- I. When asked to identify a document, or the source of your information is a document, list:
  - 1. its title or, if it has no title, its subject matter;
  - 2. its date of origin;
  - the author or addressor;
  - 4. the addressee;
  - 5. the recipient(s) of all copies of the document; and
  - 6. the identity of all custodians of the document.

In lieu of identifying a document, you may attach a copy of such document to your answer.

- J. For each document produced, please indicate on the document or identify in some manner the number of the Request for Production of Documents (including any subpart thereof) to which it responds.
- K. If anything is deleted from a document produced, indicate the reason for the deletion and the subject matter of the deleted material.
- L. If any objection is made to any Discovery Request, state the basis for the objection.

  The reasons for your objection must be stated with particularity.
- M. You may not give lack of information or knowledge as a reason for failure to admit or deny a requested admission or answer an interrogatory unless you have made reasonable inquiry and unless the information known or readily obtainable by you is insufficient to enable you to admit or deny the matter for which an admission is requested, or to substantively answer an interrogatory. In such

case, you shall set forth the nature of the inquiry undertaken.

- N. If in responding to any discovery request posed by Plaintiff, Defendant determines it is aware of potentially responsive document(s), information, or communication(s), but Defendant wants to withhold such document, information, or communication in light of Defendant's interpretation of applicable law, Defendant shall provide a Privilege Log that states separately for each such document, piece of information, or communication, as applicable—1) the title and subject matter; 2) date; 3) author(s) / participant(s) (including their titles); 4) each recipient of the document, communication, or piece of information; and 5) each basis upon which the document, information, or communication is being withheld.
- O. This discovery request is directed to Defendant, as defined below, and embraces all information and documents over which Defendant (including officers, employees, agents, servants, representatives, its attorneys, or other persons directly or indirectly employed or retained by it, or anyone else acting on its behalf or otherwise subject to its control) has possession, custody, control, or access.
- P. Defined terms embrace not only the form of the word actually defined but also all variants of that word that can be made by adding and/or changing suffixes; thus, e.g., the definition given below for the word "Identify" also applies to the words "identified," "identify," "identifying," "identification," etc. Words used in the singular also shall be taken to mean and include the plural. Words used in the plural also shall be taken to mean and include the singular. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

- Q. When responding (by response, answer, objection, or otherwise) to each of the following interrogatories and requests for production of documents -- and each such response should be made individually -- please set out the discovery request immediately before setting out such response.
- R. Defendant shall serve its answers (including any objections) to these Discovery Requests within thirty days of the date this document is served on Defendant.
- S. Each interrogatory shall be answered separately and fully in writing and under oath.
- T. Identify each person answering, or who has been consulted or assisted in answering the Discovery Requests (except those persons providing purely clerical and secretarial assistance). For each such person, specify the item of discovery that such person assisted in answering, or for which he or she provided any information.
- U. Defendant's written response will provide a date certain by which documents responsive to these production requests will be available for inspection and copying.
- V. Initial inspections by the United States of documents within the scope of these requests for production -- be they the originals, duplicates, or iterations of such documents -- shall take place wherever such documents normally reside or are maintained, unless the United States and Defendant agree to some other location(s).
- W. If any document requested is no longer in the possession, custody, or control of defendant, state:
  - 1. The disposition of the document;

- 2. When such document was prepared;
- The identity and address of the current custodian of the document;
- 4. The person who made the decision to transfer or dispose of the document; and,
- 5. The reasons for the transfer or disposition.
- X. These Discovery Requests are continuing in nature. To the extent the responses may be enlarged, diminished, or modified by information acquired by Defendant following service of its responses, Defendant should promptly serve supplemental answers reflecting such information, as required by Rule 26(e), Federal Rules of Civil Procedure.
- Y. If Defendant objects to a Discovery Request as vague or burdensome, it is directed to respond substantively to the best of its ability and in good faith, preserving any bona fide objections if necessary. Because the United States may not know in advance which questions are overly vague or burdensome to the Defendant, the United States requests that the Defendant attempt to obtain clarification or delimiting of the United States' Discovery Requests from the undersigned counsel, if circumstances otherwise prevent a full response to the question as written.
  - Z. Unless otherwise stated, the relevant time frame is 1972 to the present.

## **DEFINITIONS**

For the purpose of these Discovery Requests, the following definitions apply.

A. Unless otherwise expressly provided herein, terms used in these Discovery Requests requests which are defined in the Clean Water Act ("CWA"), 33 U.S.C. § 1311 et seq., the Resource

Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., or in the regulations promulgated thereunder, shall have the meaning assigned to them in such statutes or regulations.

- B. "You" and "your" means Defendant Chemetco, Inc. ("Chemetco"), and all persons acting on behalf of Chemetco, Inc., including officers, directors, trustees, agents, attorneys and employees of Chemetco, and any predecessors (whether by merger, consolidation, acquisition or other transaction or legal process), parents, persons holding a controlling stock interest, subsidiaries, divisions or affiliates of Chemetco.
- C. "Defendant" unless otherwise stated herein, means Defendant Chemetco, Inc. ("Chemetco"), and includes, without limitation, its past and present officers, employees, agents, servants, representatives, counsel, consultants, contractors, subcontractors or other persons directly or indirectly employed by the Defendant or anyone else, past or present, acting on behalf of or otherwise subject to Defendant's control.
- D. "Document" means the complete original (or a complete copy where the original is not available) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all typewritten, handwritten, printed or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by Rule 34 of the Federal Rules of Civil Procedure. The term "document" includes, but is not limited to, any logs of materials or containers shipped, other logs, invoices, purchase orders, checks,

receipts, bills of lading, weight receipts, toll receipts, loading tickets, receiving tickets, shipping orders, manifests, inventories, letters and other correspondence, offers, contracts, agreements, bids, proposals, policies, licenses, permits, applications, reports to government agencies, monthly reports, other reports, ledgers, accounts receivable, accounts payable, account statements, financial statements, minutes of meetings, sales estimates, sales reports, source and use analyses, memoranda, notes, calendar or diary entries, agendas, bulletins, graphs, charts, maps, photographs, drawings, surveys, data, sampling results, analytical results, descriptions of materials, load schedules, price lists, summaries, telegrams, teletypes, computer printouts, magnetic tapes, discs, microfilm and microfiche.

- E. "Person" means any natural person, sole proprietorship, private corporation, public corporation, municipal corporation, foreign or domestic corporation, non-profit corporation, partnership, joint venture, association, foreign, state or local governmental entity, political subdivision, public or private university or other institution of higher education, group, association, committee, trust, estate or any other organization.
- F. The terms "all," "each," and "every," and all conjunctions and disjunctions herein, shall be construed in the broadest possible sense, so as to bring within the scope of these questions any answers that would otherwise be omitted.
- G. "Facility" means Chemetco's secondary copper smelting plant at Hartford,

  Illinois, referred to in the United States' Complaint in this action, including any adjacent real property

  owned or leased by Chemetco, or otherwise used by Chemetco in support of its secondary copper

  smelting operations.
  - H. "Complaint" (or "Compl.") means the complaint filed by the United States in the above-

captioned case.

- I. "Answer" means the response of Chemetco, Inc. to the Complaint of The United States of America.
- J. "Plaintiff" and "United States" shall mean the government of the United States of America, its various branches, regulatory bodies, agencies, commissions, investigative arms or bodies, departments, divisions, and its Secretaries, agents, attorneys, administrators, employees, and any and all other persons acting for or on its behalf.
- K. "Relate to" or "relating to" means discuss, describe, refer to, reflect, contain, comprise, constitute, set forth, or concern in whole or in part.
  - L. "Or" means and/or.
- M. "U.S. EPA" means the United States Environmental Protection Agency, its various branches, regulatory bodies, sub-divisions, commissions, investigative arms or bodies, departments, Secretaries, agents, attorneys, administrators, employees, and any other person or persons acting on its behalf.
- N. "Corps" means the United States Army Corps of Engineers, its various branches, districts, regulatory bodies, sub-divisions, commissions, investigative arms or bodies, departments, Secretaries, agents, attorneys, administrators, employees, engineers and any other person or persons acting on its behalf.
- O. "Site" means the area on Chemetco's property which consists of approximately eight (8) acres, which is located in Section 16, Township 4 North, Range 9 West, City of Hartford. County of Madison, State of Illinois, and which is identified in Exhibit 2 to the Administrative Order dated

September 24, 1997 (the Administrative Order is Exhibit C to the United States' Complaint). (The "Site" is also referred to in Illinois' First Request for Admissions as the "Contractors' parking lot.")

P. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions.

## REQUESTS FOR ADMISSIONS

- Admit that sometime after 1972 and prior to 1980, Defendant purchased the Site.

  Response:
- Admit that prior to 1980, the Site did not consist of chunk slag.
   Response:
- Admit that prior to 1980, the Site did not consist of limestone gravel.
   Response:
- 4. Admit that prior to 1980, the Site did not consist of limestone gravel on the Site's surface.

- 5. Admit that prior to 1980, the Site did not consist of broken concrete.
  - Response:
- 6. Admit that in 1980, Defendant added chunk slag to a portion of the Site.

  Response:
- 7. Admit that in 1980, Defendant added limestone gravel to a portion of the Sixe.

  Response:

8. Admit that the chunk slag came from Defendant's Facility.

Response:

9. Admit that the chunk slag is or contains industrial waste.

Response:

10. Admit that the chunk slag is or contains solid waste.

Response:

11. Admit that the chunk slag is or contains garbage.

Response:

12. Admit that the chunk slag is or contains chemical waste.

Response:

13. Admit that the chunk slag is or contains wrecked or discarded equipment.

Response:

14. Admit that the limestone gravel is or contains rock.

Response:

15. Admit that in 1980, Defendant used front-end loaders at the Site.

Response:

16. Admit that in 1980, Defendant used front-end loaders to deposit chunk slag to a portion of the Site.

Response:

17. Admit that in 1980, Defendant used front-end loaders to deposit limestone gravel to a portion of the Site.

## Response:

18. Admit that in 1980, Defendant used front-end loaders to level out chunk slag on a portion of the Site.

## Response:

19. Admit that in 1980, Defendant used front-end loaders to level out limestone gravel on a portion of the Site.

# Response:

20. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag.

## Response:

21. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a discernible way.

## Response:

22. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a confined way.

## Response:

23. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a discrete way.

## Response:

24. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel.

## Response:

25. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a discernible way.

# Response:

26. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a confined way.

# Response:

27. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a discrete way.

## Response:

28. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a discernible way.

# Response:

29. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a confined way.

## Response:

30. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a discrete way.

## Response:

31. Admit that after 1980, Defendant added broken concrete to a portion of the Site.

32. Admit that after 1980, Defendant added limestone gravel to a portion of the Site.

Response:

33. Admit that Defendant added broken concrete to a portion of the Site on more than one occasion.

## Response:

34. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1980 and the end of 1983.

# Response:

35. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1984 and the end of 1988.

## Response:

36. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1989 and the end of 1992.

## Response:

37. Admit that in 1991 Defendant hired an individual, Rich Vest, to grade broken concrete on a portion of the Site with a bulldozer.

#### Response:

38. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete.

39. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete in a discernible way.

# Response:

40. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete is a confined way.

## Response:

41. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete in a discrete way.

## Response:

42. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1992 and October 9, 1997.

# Response:

43. Admit that Defendant added limestone gravel to a portion of the Site on more than one occasion.

## Response:

44. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1980 and the end of 1983.

#### Response:

45. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1984 and the end of 1988.

46. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1989 and the end of 1992.

## Response:

47. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1992 and October 9, 1997.

## Response:

48. Admit that the broken concrete came from Defendant's Facility.

## Response:

49. Admit that the broken concrete is or contains solid waste.

# Response:

50. Admit that the broken concrete is or contains garbage.

## Response:

51. Admit that the broken concrete is or contains wrecked or discarded equipment.

#### Response:

52. Admit that the broken concrete is or contains rock.

#### Response:

53. Admit that the broken concrete is or contains sand.

#### Response:

54. Admit that the broken concrete is or contains industrial waste.

55. Admit that Defendant used front-end loaders to add broken concrete to a portion of the Site.

## Response:

56. Admit that Desendant used front-end loaders to deposit broken concrete to a portion of the Site.

## Response:

57. Admit that Defendant used front-end loaders to level out broken concrete on a portion of the Site.

## Response:

58. Admit that after the initial addition of limestone gravel in 1980, Defendant used frontend loaders to deposit limestone gravel to a portion of the Site.

## Response:

59. Admit that after the initial addition of limestone gravel in 1980, Defendant used frontend loaders to level out limestone gravel on a portion of the Site.

# Response:

60. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete.

## Response:

61. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a discernible way.

62. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a confined way.

## Response:

63. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a discrete way.

## Response:

64. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel.

## Response:

65. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a discernible way.

#### Response:

66. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a confined way.

#### Response:

67. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a discrete way.

## Response:

68. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a discernible way.

69. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a confined way.

## Response:

70. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a discrete way.

# Response:

- 71. Admit that the Site's surface elevation is higher currently than it was before 1980.

  Response:
- 72. Admit that the Site's surface currently is dry.

## Response:

- 73. Admit that Defendant has previously used the Site for a motor vehicle parking lot.

  Response:
- 74. Admit that Defendant currently uses the Site for a motor vehicle parking lot.

  Response:
- 75. Admit that chunk slag currently exists on a portion of the Site.

  Response:
- 76. Admit that broken concrete currently exists on a portion of the Site.

## Response:

77. Admit that limestone gravel currently exists on a portion of the Site.

## Response:

78. Admit that no chunk slag has been removed from the Site.

### Response:

79. Admit that no broken concrete has been removed from the Site.

Response:

80. Admit that no limestone gravel has been removed from the Site.

Response:

81. Admit that the total amount of acreage impacted by Defendant's additions of material to the Site is approximately 8 acres.

Response:

82. Admit that the materials added to the Site cover a depth of approximately 93,000 cubic yards.

Response:

83. Admit that prior to 1980, the Site consisted, at least in part, of wetlands.

Response:

84. Admit that prior to 1980, the Site consisted of approximately 4.08 acres of wetlands.

Response:

85. Admit that prior to 1980, the Site consisted of 5 or more acres of wetlands.

Response:

86. Admit that prior to 1980, the Site consisted of 6 or more acres of wetlands.

Response:

87. Admit that prior to 1980, the Site consisted of 7 or more acres of wetlands.

88.	Admit that prior to 1980, the Site consisted of approximately 8 acres of wetlan		
	Response:		

89. Admit that the Site borders Long Lake.

Response:

90. Admit that the Site is contiguous to Long Lake.

Response:

. 91. Admit that the Site neighbors Long Lake.

Response:

92. Admit that the Site is proximate to Long Lake.

Response:

93. Admit that the Site is close to Long Lake.

Response:

94. Admit that the Site is within 500 feet of Long Lake.

Response:

95. Admit that from 1972 to 1979, the Site consisted of a gently sloping landscape.

Response:

96. Admit that from 1972 to 1979, the Site's surface elevation was higher than the surface elevation of that portion of Long Lake that borders the Facility.

Response:

97. Admit that water flows downhill.

98. Admit that from 1972 to 1979, some amount of surface water drained off the Site into Long Lake.

# Response:

99. Admit that Long Lake is a body of water..

## Response:

100. Admit that Long Lake is a tributary of the Mississippi River.

## Response:

101. Admit that Long Lake flows into the Mississippi River.

## Response:

102. Admit that Long Lake is hydrologically connected to the Mississippi River.

# Response:

103. Admit that Long Lake has a surface water connection to the Mississippi River.

## Response:

104. Admit that the Mississippi River is a body of water.

#### Response:

105. Admit that the Mississippi River is navigable-in-fact.

#### Response:

106. Admit that the Mississippi River has historically been used to transport interstate commerce.

## Response:

107. Admit that the Mississippi River is currently used to transport interstate commerce.

## Response:

108. Admit that the Site is within 2 miles of the Mississippi River.

## Response:

109. Admit that Defendant did not have any type of federal, state, county, or municipal permit for any activity on the Site.

## Response:

110. Admit that Defendant did not have a permit from the Corps under section 404 of the Clean Water Act for any activity on the Site.

# Response:

111. Admit that Defendant did not apply for any type of federal, state, county, or municipal permit for any activity on the Site.

## Response:

112. Admit that Desendant did not apply to the Corps for a permit under section 404 of the Clean Water Act for any activity on the Site.

## Response:

113. Admit that Defendant received the September 24, 1997 Administrative Order and its Exhibits 1-3 (Compl., Ex. C) ("AO").

## Response:

114. Admit that Defendant did not submit to U.S. EPA within 30 days of Defendant's receipt of the AO a written plan to restore the wetlands on the Site to their original condition and contours.

# Response:

115. Admit that Defendant did not submit to U.S. EPA within 30 days of Defendant's receipt of the AO a written plan to restore the wetlands on the Site to their original condition and contours consistent with the general guidelines reflected in Exhibit 3 to the AO.

## Response:

116. Admit that Defendant has not, to date, obtained U.S. EPA's approval of a wetlands restoration plan for the Site.

## Response:

117. Admit that Defendant has not, to date, implemented any wetlands restoration plan for the Site.

## Response:

118. Admit that Defendant has not, to date, performed any work at the Site designed to restore the Site to the condition it was in prior to 1980.

#### Response:

## **INTERROGATORIES**

1. For each and every Request for Admission that you deny or partially deny, identify and state with particularity the factual basis for your denial or for that part of the Request for Admission that you deny.

#### Answer:

2. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 197) that Plaintiff's claims are barred by the statute of limitations.

## Answer:

3. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 198) that Plaintiff's claims are barred by the doctrines of estoppel, acquiescence, laches, waiver, or unclean hands.

#### Answer:

4. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 199) that the Clean Water Act is not applicable to the areas on or around Defendant's property.

## Answer:

5. Identify the date you became owner of the Site, describe with particularity the visual condition of the Site when you became owner, and identify any person with knowledge about the condition of the Site prior to 1980.

#### Answer:

6. Identify and state with particularity the activity or activities performed on the Site, and who performed that activity or those activities, prior to Defendant's ownership of the Site.

#### Answer:

7. Identify and state with particularity the activity or activities performed on the Site, and who performed that activity or those activities, between the time Defendant became owner of the Site and the time it added materials to the Site in 1980.

#### Answer:

8. Identify all persons who participated in, including but not limited to any person who made recommendations in aide of, Defendant's decision to add materials to the Site.

#### Answer:

9. Identify and explain with particularity Defendant's purpose in adding materials to the Site; why Defendant chose the Site instead of another location; the cost of the activity; and the reasons why Defendant chose certain materials over others.

#### Answer:

10. Identify and state with particularity each and every type of material that was added to the Site; the dates on which each and every type of material was added to the Site; how much of each and every type of material was added to the Site (in cubic yards), both on the amount on each date and the total amount of material existing today; how much acreage of the Site was impacted by the material on each and every year since the first addition of material in 1980; and from where each and every type of material was obtained or originated.

## Answer:

Describe how each and every type of material that was added to the Site, including but not limited to identifying all persons who performed the additions and describing the equipment they used.

#### Answer:

12. Identify and explain with particularity whether any of the materials added to the Site were hazardous and provide any waste characterization information or data.

#### Answer:

13. State whether your January 30, 1998 Response to U.S. EPA's Request for Information was truthful and complete, and supplement your responses so that each and every individual response is true and complete as of the date of your response to this discovery request.

#### Answer:

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

1. For each and every Request for Admission that you deny or partially deny, identify and produce any and all documents that relate to your denial or that part of the Request for Admission that you deny, including but not limited to each and every document that either supports or tends to refute your denial or partial denial.

#### Response:

2. Identify and produce any and all documents relating to your answers to the interrogatorics in this discovery request.

#### Response:

3. Identify and produce any and all documents, including but not limited to maps, photographs, topographic surveys, wetland delineations, soil borings, vegetation surveys, hydrological or flood surveys, studies, reports, aerial photographs, and internal memoranda, describing or depicting the condition of the Site, past and present.

#### Response:

4. Identify and produce any and all documents to supplement the set of documents that you identified and produced in your January 30, 1998 Response to Request for Information so that the

set of documents produced by you is complete as of the date of your response to this discovery request.

#### Response:

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General

Dated: 9/17/0/

ANDREW P. DOYLE

U.S. Department of Justice

Environmental Defense Section

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following individuals:

#### CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff, the United States of America, hereby certifies that on Sept. 7 2001, he caused the foregoing UNITED STATES' FIRST REQUESTS FOR ADMISSIONS AND SECOND SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS to be served on this date by Federal Express, priority overnight, as well as by facsimile, on the

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ATTORNEY FOR THE UNITED STATES



U.S. DEPARTMENT OF JUSTICE Environment & Natural Resources Division Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986

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Voice Confirmation Number: (202) 514- 2965

#### FAX TRANSMISSION COVER SHEET

RECIPIENT(S)	DESTINATION'S FAX #
1. Mike Flynn	(618) 233-0601
2. Tom Martin	(312) 886-0747
3. <u>Jeff Trevino</u>	(312) 886-0747
4. Gerald Burke	(618) 628-3720
5. <u>James Morgan</u>	(217) 524-7740
6. Chris Perzan	(217) 782-9807
7. George Von Stamwitz	(314) 621-5065
8. John Cowling	(314) 621-5065
FROM: Andrew Doyle	
*IF PROBLEMS WITH TRANSMISSION, CALL	: <u>Joan (202) 514-2965</u>
DATE: <u>September 17, 2001</u> NO. OF	PAGES 33 (Incl. Cover Sheet)
NOTES:	•

THE INFORMATION CONTAINED IN THIS FAX MESSAGE IS INTENDED ONLY FOR THE USE OF THE DESIGNATED RECIPIENT(S) NAMED ABOVE IN ACCORDANCE WITH ANY RESTRICTIONS NOTED. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE MESSAGE TO US BY MAIL. THANK YOU.

#### FLYNN & GUYMON

**ATTORNEYS** 

23 PUBLIC SQUARE, SUITE 440

BELLEVILLE, ILLINOIS 62220

618-233-0480

FAX 618-233-0601

HAROLD BALTZ (1904-1970) OTIS E. GUYMON (1908-1971)

August 3, 2001

#### FEDEX - OVERNIGHT:

Mr. Thomas J. Martin Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604

In re: US EPA and IEPA v. Chemetco, Inc.

No. 00-670-DRH

Dear Tom:

PATRICK M. FLYNN

DAVID E. GUYMON CARLA J. EHLERS

In our last telephone conversation you asked that I submit to you a Partial Consent Decree that would be acceptable to Chemetco. I therefore enclose herewith a proposed Partial Consent Decree which has been revised by George's office in his absence. The proposed Partial Consent Decree has not as yet been reviewed by George to insure that it is consistent with our last telephone conversation and, subject to that review, I tender the enclosed Partial Consent Decree to you.

As of the dictation of this letter, I am still waiting for you to confirm a time for a telephone conference call on Monday, August 6, 2001. In the meantime, I have received a letter from Greg Sukys in which, among other things, he states that "I intend to clarify Chemetco's position during the August 6 telephone conference call." Except for the enclosed proposed Partial Consent Decree which you requested, I am not sure what additional clarification is being requested.

I also believe Greg's letter accentuates the negative while I prefer to accentuate the positive. Chemetco does commit to the investigation of Long Lake followed by a formal risk assessment and, as a sign of Chemetco's continuing good faith and hope of reaching a proposed settlement, it is proceeding with the sampling and risk assessment. You will be kept advised as Chemetco proceeds.

Furthermore, Chemetco continues to commit to undertake corrective action under RCRA 7003 for the facility, when appropriate.

It is my understanding that Chemetco's position on the Long Lake investigation, risk assessment and remediation, if any, is consistent with the normal practice for such activities.

Sincerely yours,

Patrick M. Flynn

PMF:ek Enc.

cc: Mr. George M. von Stamwitz

# IN THE UNITED STATES DISTRICT COURT RECEIVED FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA

Plaintiff,

v.

Cause No. 99-CR-30048-WDS

CHEMETCO, INC.,

PILLINOIS

TO URNEYS OFFICE

PLAINTING OF ILLINOIS

CAUSE NO. 99-CR-30048-WDS

FILED

ORDER

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS EAST ST. LOUIS OFFICE

AUG 0 2 2001

#### STIEHL, District Judge:

Defendant.

Before the Court is defendant's motion to modify sentence. In this motion, the defendant seeks to have the Court suspend the periodic payments ordered herein as part of the defendant's sentence for a period of six months, and to waive the interest as previously ordered. On October 30, 2000, the Court fined the defendant corporation a total of \$3,863,500, placed it on probation for a period of five years and ordered, as part of that probation, quarterly payments of \$250,000 by the defendant. The defendant has previously paid a total of \$900,000, on that fine, including two \$250,000 quarterly payments, leaving a balance of \$2,963,000.

In support of the motion, the defendant has filed the affidavit of William C. Cassiday, defendant's Vice-President and its Comptroller, setting forth the current market conditions and the resulting financial problems which the market has created for the defendant. Upon review of the record, the Court FINDS that the current market conditions apparently have created a temporary financial situation for the defendant making it difficult for the defendant to both continue its operations and employees and make the quarterly

payments on the monetary fine imposed as part of the defendant's sentence. Accordingly, the Court GRANTS the defendant's motion for modification as follows:

The Court HEREBY suspends, for a period of three (3) months, the required quarterly payments of \$250,000 on the fine. This suspension includes the waiver of interest. Chemeteo SHALL, within thirty (30) days of the date of this Order, disclose any and all real estate holdings to the United States Probation Office. The disclosure shall include any real estate Chemeteo has an interest in, exclusive of its operating facility at Hartford, Illinois, and shall include the location of the property, the current fair market value and any liens or encumbrances on the property. Chemeteo SHALL also provide to the United States Probation Office, within forty-five (45) days of the date of this Order, a current financial statement including a ledger of all receipts and disbursements since the date of sentencing.

IT IS SO ORDERED.

DATED: 2 August 2001

DISTRICT JUDGE

#### FACSIMILE COVER SHEET

#### UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF ILLINOIS

Nine Executive Drive, Suite 300 Fairview Heights, Illinois 62208 Telephone: (618) 628-3700 FAX (618) 628-3720



DATE:

August 16, 2001

TO:

Tom Martin

**FAX NO:** 

312-886-7160

FROM:

Michael J. Quinley

**REMARKS:** 

Chemetco

PAGES:

If you do not receive all pages as noted or if the copies are not legible please

notify Lynn at (618)628-3820.

This facsimile is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential, and exempt from disclosure. If the recipient of this facsimile is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this facsimile is strictly prohibited. If you have received this communication in error, please notify this office immediately by telephone and return the original facsimile to us at the above address by the U.S. Post Office. Thank you.

8/2001

### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
and STATE OF ILLINOIS,	)	•
Plaintiffs,	)	
,	Ć	
vs.	)	No. 00-CV-670-DRH
CHEMETCO, INC.,	)	
	)	
Defendant.	)	

#### PLAINTIFF UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiff, the United States of America, by and through its attorneys, respectfully moves for partial summary judgment pursuant to Fed. R. Civ. P. 56.

- 1. The United States filed a complaint against Chemetco alleging violations fo the federal environmental laws. See Complaint (Doc. No. 1).
- 2. In some counts, the United States alleges that Chemetco discharged pollutants without a permit into waters of the United States.
- 3. In a previous case, a criminal case, Chemetco pled guilty to knowingly discharging pollutants without a permit. *See United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, Judgment in a Criminal Case (S.D. III. Oct. 30, 2000).
- 4. In light of the criminal conviction on inclusive elements, Defendant Chemetco is collaterally estopped from denying liability in this case.
- 5. No genuine issues of material fact exist, and Plaintiff is entitled to partial summary judgment as a matter of law, pursuant to Fed. R. Civ. P. 56.

6. Pursuant to Local Rule 7.1(c), attached is Plaintiff's brief in support of this motion.

WHEREFORE, the plaintiff, the United States of America, respectfully requests this Court render partial summary judgment for the plaintiff, pursuant to Fed. R. Civ. P. 56.

UNITED STATES OF AMERICA Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division

GREGORY L. SUKYS
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2068

ANDREW J. DOYLE
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Environmental Defense Section
P.O. Box 23986
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W. CHARLES GRACE United States Attorney Southern District of Illinois

GERALD M. BURKE
Assistant United States Attorney
Southern District of Illinois

9 Executive Drive

1

Fairview Heights, Illinois 62208-1344 (618) 628-3700

#### OF COUNSEL:

THOMAS J. MARTIN Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, Illinois 60604 (312) 886-4273

JEFFERY M. TREVINO Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, Illinois 60604 (312) 886-6729

#### PROOF OF SERVICE

I certify that I am an employee in the Department of Justice and am competent to serve papers. On August \_\_\_, 2001, I served a copy of the attached Plaintiff United States' Motion for Partial Summary Judgment, Brief in Support, and Proposed Order by placing copies in postpaid envelopes addressed to the below listed people and by depositing the envelopes in the United States Mail.

Patrick M. Flynn
Attorney at Law
Flynn & Guymon
23 Public Square, Suite 440
Belleville, Illinois 62220
Attorney for Defendant Chemetco

John F. Cowling
Attorney at Law
Armstrong Teasdale LLP
One Metropolitan Square
211 North Broadway, Suite 2600
St. Louis, Missouri 63102-2740
Attorney for Defendant Chemetco

Thomas Davis
James Morgan
Assistant Attorney Generals
Office of the Attorney General
State of Illinois
500 South Second Street
Springfield, Illinois 62706
Attorneys for Plaintiff State of Illinois

### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
and STATE OF ILLINOIS,	)	
	)	
Plaintiffs,	)	
	)	
vs.	) .	No. 00-CV-670-DRH
	)	
CHEMETCO, INC.,	)	
	)	
Defendant.	)	

### BRIEF IN SUPPORT OF PLAINTIFF UNITED STATES' MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiff, the United States of America, by and through its attorneys, respectfully moves for partial summary judgment pursuant to Fed. R. Civ. P. 56.

#### I. BACKGROUND

#### A. First Action - Criminal Suit.

Indictment. The United States indicted Chemetco and its supervising employees for environmental violations. See United States v. Chemetco, Inc., No. 99-CR-30048-001-WDS, Indictment (S.D. Ill. April 21, 1999) (attached). The indictment charged the defendants with conspiring, from 1986 through September 18, 1996, to violate the Clean Water Act by discharging pollutants, including lead, cadmium, and zinc, through a secret pipe into Long Lake and its adjacent wetlands. (Indictment, at 1-11). The indictment also charged the defendants with violating the Clean Water Act by the same conduct. (Indictment, at 11). Chemetco was also charged with two counts of making materially false statements to the United States Environmental Protection Agency and, in one count, to the United States Army Corps of

Engineers. (Indictment, at 11-14).

Plea of Guilty. On January 10, 2000, Chemetco pled to all four counts of the indictment.

Chemetco pled nolo contendere to the third and fourth counts of false statements.

Stipulated Facts. Chemetco stipulated to the following facts:

- Chemetco discharged contaminated storm water into the wetlands surrounding the discharge pipe (south of facility) and the unnamed ditch tributary located on Chemetco's property (Stipulation, at 6, ¶ 23);
- Inspectors observed polluted water flowing into the ditch draining into Long Lake (Stipulation, at 6, ¶ 21);
- Chemetco discharged contaminated storm water after the expiration of its permit for Outfall 001 (Stipulation, at 3);
- Chemetco discharged contaminated storm water in violation of its permit for Outfall 002 (Stipulation, at 4-5);
- From the time of the secret pipe's installation in or about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, from the Chemetco plant site and into the unnamed ditch tributary to Long Lake located on property owned by Chemetco. (Stipulation, at 5, ¶ 19); and,
- Chemetco did not have a permit under the Clean Water Act to discharge pollutants from the secret pipe into the unnamed ditch tributary to Long Lake (Stipulation, at 5, ¶ 20). See United States v. Chemetco, Inc., No. 99-CR-30048-001-WDS, Stipulation of Facts (S.D. III. Jan. 11, 2000) (attached).

Sentence and Conviction. On October 30, 2000, the district court sentenced Chemetco to a fine, penalty, injunctive relief, and conditions of probation. *See United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS, Judgment in a Criminal Case (S.D. Ill. Oct. 30, 2000) (attached).

Appeal. On appeal, Chemetco challenges the penalties in one of the four counts. See United States v. Chemetco, Inc., No. 00-3940, Docket Entry - case argued on April 20, 2001 (7th Cir. April 20, 2001). Chemetco does not challenge the conviction.

#### B. Second Action - Civil Suit.

Complaint. On August 25, 2000, the United States filed this civil complaint against Chemetco alleging violations of the federal environmental laws. See Complaint (Doc. No. 1). In asserting violations of the Clean Water Act, the United States alleges that Chemetco (1) violated the provisions of a National Pollution Discharge Elimination System ("NPDES") permit issued by the State of Illinois in 1990; (2) violated the provisions of an NPDES permit issued by the State of Illinois in 1996; (3) discharged pollutants into waters of the United States at the Chemetco Facility without prior authorization by U.S. EPA; (4) discharged pollutants into wetlands at the Chemetco Facility without prior authorization by the United States Department of the Army; and (5) failed to comply with an Administrative Order issued by U.S. EPA in 1997. In asserting violations under the Resource Conservation and Recovery Act, the United States alleges that Chemetco (6) disposed of hazardous waste, in the form of lead-hazardous refractory brick, pulverized refractory brick, and associated gunning material, without obtaining an appropriate permit; (7) treated, stored, and/or disposed of hazardous waste in the form of cadmium- and lead- bearing slurry and associated debris, without obtaining an appropriate

permit; (8) failed to determine whether certain lead-bearing solid waste slag stored at the Chemetco Facility is a hazardous waste; and (9) stored and/or disposed of hazardous waste, in the form of lead-bearing slag, without obtaining an appropriate permit. Further, because U.S. EPA determined that there is or has been a release of hazardous waste into the environment from the Chemetco Facility, the United States requested that the Court order Chemetco to conduct a facility-wide corrective action.

Relevant Counts. In the first four counts, the United States alleges violations that stem from Chemetco discharging pollutants without a permit into waters of the United States. (Complaint).

In Plaintiff's First Claim for Relief, the United States alleges that Defendant Chemetco discharged pollutants in violation of its Outfall 002 permit for 1990. (Complaint, at 28-29).

In its Second Claim for Relief, the United States alleges that Chemetco failed to prevent and plan against the discharging of polluted storm water. (Complaint, at 29-30).

In its Third Claim for Relief (language similar to the criminal indictment), the United States alleges that Chemetco discharged pollutants without a permit. (Complaint, at 30-31).

In its Fourth Claim for Relief, the United States alleges that Chemetco discharged pollutants into the wetlands without a permit. (Complaint, at 32-33). This count only goes back to 1980 and relies also on other evidence.

#### II. STATEMENT OF THE LAW

**Standard of Review**. Summary judgment shall be rendered when the record, viewed in a light most favorable to the non-moving party, reveals that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.

Collateral Estoppel. Collateral estoppel is an affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first action. See Black's Law Dictionary 256 (7th ed. 1999). The Seventh Circuit has similarly stated that "collateral estoppel 'means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." United States v. Green, 735 F.2d 1018, 1027 (7th Cir. 1984) (citing Ashe v. Swenson, 397 U.S. 436 (1970)).

A criminal conviction can be used as collateral estoppel in a later civil action. *Apley v. Apley*, 832 F.2d 1021, 1025 (7th Cir. 1987). *See also United States v. Krietemeyer*, 506 F. Supp. 289, 292 (S.D. Ill. 1980) (criminal conviction used in later civil fraud case). A "conviction is conclusive as to an issue arising against the criminal defendant in a subsequent civil action." *In the Matter of Raiford*, 695 F.2d 521, 522 (7th Cir. 1983).

Collateral estoppel has four requirements. First, the issue sought to be precluded must be the same as that involved in the first action. Second, the issue must have been actually litigated. Third, the determination of the issue must have been essential to the final judgment. Fourth and finally, the party against whom estoppel is invoked must fully be represented in the first action. *Teamsters Local 282 Pension Fund Trust v. Angelos*, 815 F.2d 452, 456 (7th Cir. 1987).

#### III. ANALYSIS

#### A. First Requirement - Same Issue.

The issue sought to be litigated in this case is identical to that which was litigated in the criminal proceeding. In the criminal proceeding, Defendant Chemetco was charged with

knowingly discharging pollutants, including lead, cadmium, and zinc, through a secret pipe into Long Lake and its adjacent wetlands. This is the same violation, absent the higher *mens rea* of knowledge, is found in the civil complaint. As such, what remains to be litigated in this case was already litigated in the criminal case. Therefore, the first step of the four-part test is satisfied.

#### B. Second Requirement - Actually Litigated.

The second inquiry is whether the issue was actually litigated. A reading of the indictment and stipulation of facts in this matter leaves no doubt that this matter was actually litigated. Defendant was criminally charged with substantive and conspiracy counts of knowingly discharging pollutants without a permit for which he is being sued in the instant civil action. Defendant entered into a stipulation of facts supporting the conviction and pled to the indictment. Therefore, the second step is satisfied.

#### C. Third Requirement - Essential Issue.

The third inquiry is whether the determination of the issue was essential to the final judgment in the criminal case. In order to criminally convict Chemetco, the United States had to prove, beyond a reasonable doubt, the following elements:

#### - Count 1 - Conspiracy

First, that the conspiracy as charged in Count 1 of the Indictment to violate the Clean Water Act existed;

Second, that the defendant knowingly became a member of the conspiracy with an intention to further the conspiracy; and,

Third, that an overt act was committed by at least one conspirator in furtherance of the conspiracy.

See 18 U.S.C. § 371.

#### - Count 2 - Violation of the Clean Water Act

First, on or about the dates charged, the Defendant knowingly discharged, or caused to be discharged a pollutant;

Second, the pollutant was discharged from a point source into a water of the United States; and,

Third, the discharge was without a Clean Water Act permit or in violation of a Clean Water Act permit.

See 33 U.S.C. §§ 1311 (a), 1319(c)(2)(A).

Defendant Chemetco pled to both counts of the indictment. Furthermore, Chemetco stipulated to those factual allegations and other facts from the stipulation of facts. The claims in the civil case are the same, except the United States does not need to prove a "knowing" *mens rea* or a conspiracy. Therefore, the issues the Defendant tries or would try to litigate here were essential issues in the previous litigation, and the third step is satisfied.

#### D. Fourth Requirement - Non-Moving Party Represented in First Action.

The final inquiry is whether the party against whom estoppel is invoked was fully represented by counsel. In the criminal case, Defendant Chemetco was represented by counsel: James K. Donovan, now a state judge; Bruce N. Cook of Cook, Shevlin, Ysursa, Brauer & Bartholomew, Ltd.; and Thomas L. Orris, then with Armstrong Teasdale LLP. Chemetco was fully represented, and this the fourth and final step is satisfied.

In conclusion, Defendant Chemetco is collaterally estopped from denying liability in this case.

#### E. Guilty Plea to Indictment Collateral Estop First Four Counts of Complaint.

The final housekeeping matter is which of the four counts in the civil complaint are entitled to the benefit of the collateral estoppel.

[\*\* needs to be filled in \*\*]

#### IV. CONCLUSION

Because all four steps of the test to determine whether collateral estoppel is proper have been satisfied, this Court should find that Defendant Chemetco is collaterally estopped from denying liability in this case.

WHEREFORE, the plaintiff, the United States of America, respectfully requests this Court render partial summary judgment for the plaintiff, pursuant to Fed. R. Civ. P. 56.

UNITED STATES OF AMERICA Respectfully submitted,

JOHN C. CRUDEN Acting Assistant Attorney General Environment and Natural Resources Division

GREGORY L. SUKYS
Trial Attorney
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2068

ANDREW J. DOYLE Trial Attorney U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986 (202) 514-4427

W. CHARLES GRACE United States Attorney Southern District of Illinois

GERALD M. BURKE Assistant United States Attorney Southern District of Illinois

9 Executive Drive

Fairview Heights, Illinois 62208-1344 (618) 628-3700

#### OF COUNSEL:

THOMAS J. MARTIN Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, Illinois 60604 (312) 886-4273

JEFFERY M. TREVINO Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, Illinois 60604 (312) 886-6729

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)		
and STATE OF ILLINOIS,	)		
		)	
Plaintiffs,		)	
		)	
VS.		)	No. 00-CV-670-DRH
		)	
CHEMETCO, INC.,	)		·
		)	
Defendant.		)	

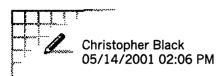
#### **MEMORANDUM AND ORDER**

#### **HERNDON, District Judge:**

Before the Court is a motion for partial summary judgment by the plaintiff, the United States of America. The United States filed a complaint against Chemetco alleging violations fo the federal environmental laws. *See* Complaint (Doc. No. 1). In the first four counts in the complaint in this instant case, the United States alleges that Chemetco discharged pollutants without a permit into waters of the United States. In a previous case, a criminal case, Chemetco pled guilty to knowingly discharging pollutants without a permit: *United States v. Chemetco, Inc.*, No. 99-CR-30048-001-WDS (S.D. III.).

A criminal conviction can be used as collateral estoppel in a later civil action. *Apley v. Apley*, 832 F.2d 1021, 1025 (7th Cir. 1987). In light of the criminal conviction on inclusive elements, Defendant Chemetco is collaterally estopped from denying liability in this case. No genuine issues of material fact exist, and Plaintiff is entitled to partial summary judgment as a matter of law, pursuant to Fed. R. Civ. P. 56.

Th	nerefore, this Court GRANTS	the United	States' motion fo	r partial summary judgmen
IT	IS SO ORDERED.			
DA	ATED:	, 2001.	·	
			DAVID R. HE	
				RNDON FES DISTRICT JUDGE



To: Thomas Martin

Subject: Chemetco May 7, FAX

Tom.

I reviewed the memo from Environ to Heather Young/Chemetco dated May3, 2001.

Here are my coments:

They propose analyzing the samples for the expanded COC list at 20% of the locations. I think a more reasonable number is 33% of the samples ran for the expanded COC list. Keeping it as a percentage is more useful if the final number of sample locations differs from the SOW. They propose 1 bkgd sample, one near source, and one downgradient sample if we go 33% we would have 2 of each samples mentioned. One fall back is that we take duplicates and run the full COC list for all samples, the aditional cost is negligible. They list the sample locations in Table 1, this assumes we will use the sample locations laid out in the SOW. Another thing to clarify is that all the samples analyzed for the expanded list are sediment samples and not surface water.

Chris Black

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
v.	)	CIV. No. 00-670-DRH
CHEMETCO, INC.	) )	•
Defendant.	j	

### DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant requests plaintiff to produce the following documents and things in accordance with the definition and scope of Rule 34 of the Federal Rules of Civil Procedure:

- 1. All documents identified in your answers to Defendant's First Interrogatories.
- 2. All documents regarding the alleged discharge of pollutants into navigable waters by Chemetco, Inc., including, without limitation, the addition of solid waste, rock, dirt, sand and industrial waste to wetlands without a permit.
- 3. All documents regarding any NPDES permits and applications for such permits referred to in the Complaint.
- 4. All documents regarding any storm water compliance inspections at the Chemetco facility.
- 5. All documents regarding any storm water prevention plans submitted by Chemetco and any review of such plans.
- QN 6. All documents regarding any RCRA inspections of the Chemetco facility.
  - 7. All test results of any samples taken on the Chemetco facility, or off the Chemetco facility that you believe are related to the Chemetco facility than were taken as a result of any actual or suspected activities of Chemetco.



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FROM: Depa

Department of Justice

Environment and Natural Resources Division

**Environmental Enforcement** 

Fax No.

(202) 616-6584

Voice No.

(202) 514-2068

SENT BY:

Greg Sukys

TO:

Tom Martin

215

**FAX NO:** 

(<del>202)</del> 886-0747

DATE:

May 8, 2001

NUMBER OF PAGES SENT (INCLUDING COVER PAGE) 4



#### U.S. Department of Justice

#### Environment and Natural Resources Division

Andrew J. Doyle Environmental Defense Section P.O. Box 23986 Washington, DC 20026-3986

Telephone (202) 514-4427 Facsimile (202) 514-8865

April 30, 2001

#### VIA FIRST CLASS MAIL

John Cowling, Esq. Armstrong, Teasdale, Schlafly & Davis One Metropolitan Square, Suite 2600 St. Louis, Missouri 63102-2740 (314) 621-5070

Re: <u>United States v. Chemetco</u>, No. 00-670-DRH (S.D. Ill.)

Dear John:

Thank you for agreeing to an additional extension of time for the United States to respond to Chemetco's First Interrogatories and Request for Production of Documents that were served through U.S. mail on March 1, 2001. Under the rules of civil procedure and the parties' previous agreement to a 30-day extension of time, our responses were due to be served on you on May 3, 2001.

As agreed today, we will call you on or about May 8 about the status of our responses. We will endeavor to get them to you as soon as possible.

As always, please call either of us with any questions.

Sincerely,

Andrew J. Doyle Gregory L. Sukvs

cc: Gerald Burke, AUSA
Thomas Martin, EPA Region 5
Jeffery Trevino, EPA Region 5
Cassandra Rice, EPA OECA
Mary Andrews, EPA OECA

U.S. ENVIRONMENTAL PROTECTION AGENCY

100S 8 0 YAM

OFFICE OF REGIONAL



To: Reginald Arkell cc: Larry Jensen, Cathleen Martwick, Mary Fulghum, FREDRICK MICKE, Derrick Kimbrou Subject: Lindsay Light III

Please research the owner of 22 West Hubbard & 30 West Hubbard. Yesterday evening, I noticed a "Building Available" Sign in front of 22 West Hubbard. Unfortunately, I did not have a pen. Please note this building is next to the building that had the recent elevator accident. Furthermore, 22 West and 30 West have a common wall. Thanks!

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
v.	)	CIV. No. 00-670-DRĤ
CHEMETCO, INC.	ý	
Defendant.	)	

#### **DEFENDANT'S FIRST INTERROGATORIES**

Defendant propounds the following interrogatories upon plaintiff to be answered in accordance with the definitions and scope of Rule 33 of the Federal Rules of Civil Procedure: INTERROGATORY NO. 1:

Identify the name and, if known, the address and telephone number, of each individual likely to have discoverable information relevant to all facts and assertions contained in the Complaint.

ANSWER:

#### **INTERROGATORY NO. 2:**

For each person identified in your answer to interrogatory 1, identify which facts and assertions about which that person is likely to have information.

ANSWER:

#### **INTERROGATORY NO. 3:**

The name, address and telephone number of any expert witness who may be used by plaintiff at trial to present evidence under Rules 702, 703 or 705 of the Federal Rules of Civil Procedure.

#### ANSWER:

#### **INTERROGATORY NO. 4:**

Identify any statements concerning this action or its subject matter previously made by any employee, agent or representative of Chemetco, Inc. including the name of the person making the statement, the date of the statement, the method of transcription of the statement and the identify the location and custodian of the statement.

ANSWER:

Respectfully submitted,

ARMSTRONG TEASDALE LLP

John F. Cowling

One Metropolitan Square, Suite 2600

St. Louis, Missouri 63102-2740

(314) 621-5070

(314) 621-5065 (facsimile)

ATTORNEYS FOR DEFENDANT CHEMETCO, INC.

FLYNN & GUYMON
Patrick M. Flynn
23 Public Square, Suite 440
Belleville, IL 62220
(618) 233-0480
(618) 233-0601 (facsimile)
Attorney for Defendant CHEMETCO, INC.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed first class, postage prepaid this 1st day of March, 2001, to:

Gregory L. Sukys U.S. Department of Justice Environmental Enforcement Section P.O. Box 7611 Washington, D.C. 20044

Andrew J. Doyle U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986

Thomas J. Martin Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604

Jeffery M. Trevino Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604 Gerald M. Burke Assistant U.S. Attorney Southern District of Illinois 9 Executive Drive, Suite 300 Fairview Heights, IL 62208

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Compliance Assurance
401 M. Street, S.W.
Washington, D.C. 20460

( muie Deister

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
v.	)	CIV. No. 00-670-DRH
CHEMETCO, INC.	)	
Defendant.	)	

#### DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Defendant requests plaintiff to produce the following documents and things in accordance with the definition and scope of Rule 34 of the Federal Rules of Civil Procedure:

- 1. All documents identified in your answers to Defendant's First Interrogatories.
- 2. All documents regarding the alleged discharge of pollutants into navigable waters by Chemetco, Inc., including, without limitation, the addition of solid waste, rock, dirt, sand and industrial waste to wetlands without a permit.
- 3. All documents regarding any NPDES permits and applications for such permits referred to in the Complaint.
- 4. All documents regarding any storm water compliance inspections at the Chemetco facility.
- 5. All documents regarding any storm water prevention plans submitted by Chemetco and any review of such plans.
  - 6. All documents regarding any RCRA inspections of the Chemetco facility.
- 7. All test results of any samples taken on the Chemetco facility, or off the Chemetco facility that you believe are related to the Chemetco facility than were taken as a result of any actual or suspected activities of Chemetco.

- 8. All documents regarding any actions by the US Army Corps of Engineers relating to Chemetco Inc. or its facilities.
  - 9. All document regarding any impoundment dams constructed by or for Chemetco.
- 10. All documents related to any by-products, slag, sludges, gunning material, refractory brick, dead trees and spent materials generated by Chemetco, including without limitation, any test results from testing of those materials.
  - 11. All documents regarding any slurry discharges by Chemetco.
- 12. All documents regarding any outfall exceedances by Chemetco as alleged in the Complaint.
  - 13. All documents regarding any violation notices referred to in the Complaint.
- 14. All documents regarding any Wetland Determinations related to the property referred to in the Complaint.
  - 15. All documents regarding any zinc oxide discharges by Chemetco, Inc.
  - 16. All documents regarding the nature and appearance of the Chemetco Facility.
- 17. All documents regarding Chemetco Inc.'s waste handling, storage and disposal practices.
- 18. All documents regarding the appropriateness and extent of a civil penalty for the conduct alleged in the Complaint.
- 19. All documents regarding the NPDES and storm water claims alleged in the Complaint and referred to in your initial disclosures.
- 20. All documents regarding Chemetco's sewer and water treatment systems as referred to in your initial disclosures.
- 21. All documents regarding the discharge pipe, the matter being discharged, the discharge and Chemetco's response to the discharge as referred to in your initial disclosures.

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- 22. All documents regarding any RCRA sampling or inspections of the Chemetco facilities.
- 23. All documents regarding the representativeness of the sampling of the slag pile waste, as referred to in your initial disclosures.
- 24. All documents regarding the need for and types of corrective action necessary at the facility under RCRA.
  - 25. All documents regarding Chemetco's water discharges.
  - 26. All documents regarding the groundwater conditions at the Chemetco facility.
- 27. All documents regarding the development and implementation of the May 1998 sampling plan referred to in your initial disclosures.
- 28. All documents regarding the application of the Bevill exclusions and applicability of the TCLP for mining and mineral waste as referred to in your initial disclosures.
- 29. All documents provided to any expert witness who may be used by plaintiff at trial to present evidence under Rules 702, 703 or 705 of the Federal Rules of Civil Procedure.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

John If. Cowling

One Metropolitan Square, Suite 2600

St. Louis, Missouri 63102-2740

(314) 621-5070

(314) 621-5065 (facsimile)

ATTORNEYS FOR DEFENDANT CHEMETCO, INC.

FLYNN & GUYMON
Patrick M. Flynn
23 Public Square, Suite 440
Belleville, IL 62220
(618) 233-0480
(618) 233-0601 (facsimile)
Attorney for Defendant CHEMETCO, INC.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed first class, postage prepaid this 1st day of March, 2001, to:

Gregory L. Sukys U.S. Department of Justice Environmental Enforcement Section P.O. Box 7611 Washington, D.C. 20044

Andrew J. Doyle U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986

Thomas J. Martin Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604

Jeffery M. Trevino Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604 Gerald M. Burke Assistant U.S. Attorney Southern District of Illinois 9 Executive Drive, Suite 300 Fairview Heights, IL 62208

Cassandra Rice
U.S. EPA
Office of Enforcement and
Compliance Assurance
401 M. Street, S.W.
Washington, D.C. 20460

Mary Andrews
U.S. EPA
Office of Enforcement and
Compliance Assurance
401 M. Street, S.W.
Washington, D.C. 20460

anne Deistes



Environment and Natural Resources Division

Environmental Enforcement Section P.O. Box 7611 Washington, DC 20044-7611 Telephone (202) 514-2068 Facsimile (202) 616-6584

February 23, 2001

### VIA FACSIMILE

George M. von Stamwitz, Esq. Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102-2740

Re:

<u>United States v. Chemetco</u>, No. 00-670-DRH (S.D. Ill.) <u>Illinois v. Chemetco</u>, No. 00-677-WDS (S.D. Ill.)

#### Dear George:

This responds to your March 9, 2000 letter concerning the regulatory status of the slag at Chemetco's facility. We cannot agree with the analyses and conclusions included in that letter, for the reasons set forth below.

First, as set out in the United States' complaint, it is and remains EPA's position that the waste slag comprising the large pile on Chemetco's property is a "solid waste" under RCRA. There are several reasons for this determination:

- Inputs used in Chemetco's smelting operation (e.g., automotive radiators and other high lead and zinc content scrap) lead to outputs (i.e., the waste slag) that contain extremely high concentrations of lead. The inputs used by Chemetco have produced a waste slag dissimilar to the slag of other smelting operations.
- The waste slag is a process residue which is not one of the primary products of Chemetco's production process. As such, Chemetco's waste slag is a "byproduct" under RCRA.
- Chemetco accumulates and stores the waste slag on the ground in an "uncontained" manner beyond regulatory time frames. As such, the waste slag is considered "abandoned" under RCRA.
- To the extent Chemetco has attempted to recycle or use the waste slag as a product, it has done so in a way that relies on speculative accumulation of the waste slag on the facility grounds and which constitutes sham recycling or relies on a use in a manner constituting disposal.
- The proposed use of Chemetco's waste slag as an additive to cement (See Appendix 5 to your March 9, 2000 letter, entitled, "Chemetco Slag Issues"), would not change this determination.

Because the slag is a solid waste, 35 Ill. Adm. Code 722.111 and 40 C.F.R. § 262.11 require that Chemetco determine whether the waste slag also is a "hazardous waste." Chemetco

acknowledged the applicability of the hazardous waste determination requirement in 1988 by applying the then applicable test for the toxicity characteristic, the "EP Tox" test, to its slag. There are still many questions about whether those analyses showed the slag to be non-hazardous. However, this question is irrelevant because no wastes were "grand fathered" as being non-hazardous by virtue of the old EP Tox rule. Thus, there is no legal relevance attached to the characterization of the slag in 1988 using EP Tox.

As you know, the Toxicity Characteristic Leaching Procedure ("TCLP"), which was developed pursuant to the Hazardous and Solid Waste Amendments of 1984, and which became effective on September 25, 1990, applies to secondary copper smelting operations such as Chemetco's. The TC rule requires generators to determine if their waste was hazardous under TCLP, including wastes previously tested under EP Tox. Guidance documents issued by EPA advise generators that they need not test their waste to determine if it is hazardous, but emphasize that incorrect determinations that are based on knowledge of the waste and/or the process that generated the waste subject generators to liability under RCRA. Here, Chemetco either failed to undertake the required waste determination or failed to disclose the results of its determination to EPA and the State. In any event, the TCLP sample results for every sample of Chemetco's waste slag taken from the slag pile by EPA exhibited the characteristic of toxicity due to lead content.

Exhibit 5 of your March 9, 2000 letter also discusses the statistical validity and representativeness of the waste slag samples that EPA took at the pile. The definition of "representative sample" set forth at 40 C.F.R.§ 260.10 states that the term "means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole." In this case, given what is known about the nature of Chemetco's operation, the slag Chemetco has produced, and how the slag is generated, U.S. EPA has no reason to believe that the waste slag in one area of the pile varies to any legally significant degree with other sections of the slag pile such that any difference would change the regulatory status of the waste slag, especially as to lead content. Nonetheless, EPA took 20 samples from various parts of the waste slag pile on Chemetco's property, i.e., 17 composite samples and 3 grab samples. We previously provided you a detailed description of the field sampling protocol and sampling procedures used in that investigation. It is EPA's position that the protocol and procedures followed by EPA produced a statistically valid representative analysis of the slag pile in compliance with the rule cited above.

It is also EPA's position that, absent information to the contrary, the results of the sampling and the magnitude of the exceedance over the lead standard address any representa-

While the Agency believes that a testing requirement could improve the Agency's enforcement tools, the Agency believes that the current requirements for hazardous waste determinations are not ineffective because many generators do have sufficient knowledge to make a determination without a test. The Agency further believes that liability for incorrect determinations provides a strong incentive for not misclassifying hazardous wastes as non-hazardous.

<u>Id.</u>, at 11829. See also, EPA/OSWER Doc. No. 9451.1991 (03) ("The regulations allow generators to use their knowledge of the waste and/or the process that generated it to determine if it is hazardous. They are, however, required to be correct in their determination") (enclosed).

<sup>&</sup>lt;sup>1</sup> The preamble to the TC-rule, located at 55 FR 11798 (Mar. 29, 1990), states, "the regulations do not require testing; a generator may apply knowledge of the waste to determine if it is hazardous." <u>Id.</u>, at 11806. However, the preamble clearly contemplates that incorrect determinations based on knowledge of the waste and its generation processes will subject generators to liability:

tiveness assertion that you might raise. The regulatory preamble to certain regulatory amendments proposed on Feb. 8, 1990, states:

If a sample possesses the property of interest, or contains the constituent at a high enough level relative to the regulatory threshold, then the population from which the sample was drawn must also possess the property of interest or contain that constituent. Depending on the degree to which the property of interest is exceeded, testing of samples which represent all aspects of the waste or other material may not be necessary to prove that the waste is subject to regulation.

55 Fed. Reg. 4441 (Feb. 8, 1990).<sup>2</sup> This is precisely what the sample results show. Not only were all 20 samples taken from the waste slag pile in excess of the TCLP regulatory limit of 5mg/l (for lead), but nearly all of the sample results were at least two times over the limit. Further, the statistical mean of the lead samples was 35.2 mg/l, with a 95 percent confidence level of 9.47. This indicates that 95 percent of all the TCLP lead results are between 25.7 and 44.7mg/l. The confidence level indicates that 95 percent of the slag pile area which was characterized has a TCLP limit of 25.7 mg/l. This figure is over 5 times the regulatory limit. Such results are at a high enough level compared to the regulatory threshold to negate the need for further testing.

Finally, your letter discusses the TCLP and Chemetco's position regarding the applicability of the Synthetic Precipitation Leaching Procedure ("SPLP"). EPA's regulations require the use of TCLP in hazardous waste determinations at secondary copper facilities such as Chemetco's. Under the regulation, EPA has no discretion to use other testing methods or to analyze criteria related to the whether the waste at issue is subject to the TCLP "mismanagement scenario." The cases cited in your letter involve (mostly unsuccessful) challenges to regulations, not application(s) of the test in the enforcement context. It is too late for Chemetco to challenge the regulation and its applicability to Chemetco's facility. This being the case, the SPLP sample results simply are irrelevant for hazardous waste determination purposes.

We look forward to further discussions on this topic, however, we should realistically assess whether an agreement can be reached concerning the regulatory status of, and corrective action options for, the waste slag, since the absence of an agreement will guide our discovery efforts.

Sincerely,

v // Sukv

Enclosure

<sup>&</sup>lt;sup>2</sup> On January 23, 1989, EPA proposed amending its hazardous waste testing and monitoring regulations under RCRA Subtitle C by: (1) Incorporating the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (SW-846) into the RCRA regulations; (2) updating SW-846 with additional methods and information; and (3) mandating minimum Quality Control (QC) procedures for all RCRA testing. (54 FR 3212-3229 (Jan.23, 1989)). In response to comments, EPA proposed, in addition to the option of promulgating the rulemaking as proposed, a number of technical modifications and/or clarifications to the Third Edition of SW-846 and the inclusion of specific QC procedures in SW-846, to be incorporated as Chapter One of SW-846. EPA also proposed deleting appendices III and X to 40 C.F.R. part 261. As such, EPA reopened the comment period to receive comments on the new options and the deletion of appendices III and X. See 55 FR 4440 (Feb. 8, 1990).

cc:

- M. Andrews
  T. Martin
  J. Trevino
  P. Kuefler
  G. Burke
  J. Morgan
  C. Perzan
  A. Doyle

9451.1991(03)

## OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 16 1991

Mr. Michael H. Oberg Chief Operating Officer United Marketing International, Inc. P.O. Box 989 Everett, WA 98206-0989

Dear Mr. Oberg:

Thank you for your letter dated February 19, 1991 concerning the Toxicity Characteristic (TC) rule and its relationship to used oil filter disposal as outlined in a October 30, 1990 memorandum to Mr. Robert Duprey in EPA's Region 8 office.

The TC rule was effective in all states on September 25, 1990, regardless of the state's RCRA authorization status. The TC will be implemented and enforced by EPA's Regional Offices until such time as states are authorized to implement and enforce the TC. Please note that the compliance date for generators of small quantities (from 100 to 1000 kg of total hazardous waste in a calendar month) of TC-hazardous wastes was March 29, 1991. Small quantity generators (SQGs) were required to begin managing their TC-hazardous waste in accordance with all applicable hazardous waste regulations on that date. Of particular concern to the Agency is the proper management (e.g., storage, treatment, transportation and disposal) of these wastes.

As a point of clarification, I would also note that under the TC rule, generators are not specifically required to test their waste. The regulations allow generators to use their knowledge of the waste and/or the process that generated it to determine if it is hazardous. They are, however, required to be correct in their determination.

The Agency intends to fully enforce this rule. The Agency's enforcement policy clearly is designed to identify and prosecute violators and to deny any economic benefit resulting from violations. Civil and criminal penalties are also available as enforcement tools.

Finally, the Office of Solid waste appreciates the information you provided pertaining to recently completed studies of used oil filters conducted by the University of Northern Iowa. This study addresses the Agency's recommended best operating practice contained in the October 30, 1990 memorandum which suggested both draining and crushing of the oil filter to ensure maximum removal of the oil. Of course, as discussed earlier, each hazardous waste generator is ultimately responsible for making their own determination as to whether their waste is hazardous under the TC rule for any waste stream generated.

I hope this letter clarifies the nature of the Agency's implementation of the TC rule. If you have any additional questions, please feel free to contact Mr. Steve Cochran of my staff at (202) 382-4770 for general TC questions and Mr. Hugh Davis in the Office of Waste Programs Enforcement at (202) 475-9867, if you have TC enforcement questions.

Sincerely,

Original Document signed

Sylvia K. Lowrance Director Office of Solid Waste



#### Environment and Natural Resources Division

Environmental Enforcement Section P.O. Box 7611 Telephone (202) 514-2068 Facsimile (202) 616-6584

Washington, DC 20044-7611

February 21, 2001

#### VIA FACSIMILE

George M. von Stamwitz Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102-2740

Re:

United States v. Chemetco, No. 00-670-DRH (S.D. III.)

Illinois v. Chemetco, No. 00-677-WDS (S.D. Ill.)

#### Dear George:

In anticipation of an agreement on the terms of the proposed partial consent decree addressing the zinc oxide and refractory brick disposal areas, this letter discusses the United State's position on the waste slag now stored at Chemetco's facility in Hartford, Illinois ("Hartford Facility"). We believe that the parties should turn their attention toward determining whether an agreement can be reached concerning the regulatory status of, and corrective action options for, the waste slag, since the absence of an agreement will guide our discovery efforts. In that regard, this letter provides the government's initial response to Exhibit 5 of your March 9, 2000 letter relating to the regulatory status of the slag at the Hartford Facility. We cannot agree with the analysis and conclusions included in that letter, for the reasons set forth below.

First, as set out in the United States' complaint, it is and remains EPA's position that the slag on Chemetco's property is a "solid waste" under RCRA. There are several reasons for this determination:

- Inputs used in Chemetco's smelting operation (<u>e.g.</u>, automotive radiators and other high lead and zinc content scrap) lead to outputs (<u>e.g.</u>, the waste slag) that contain extremely high concentrations of lead. The inputs used by Chemetco have produced a waste slag dissimilar to the slag of other smelting operations.
- The waste slag is a process residue which is not one of the primary products of Chemetco's production process. As such, Chemetco's waste slag is an "byproduct" under RCRA.
- Chemetco accumulates and stores the slag on the ground in an "uncontained" manner beyond regulatory time frames. As such, the slag is considered "abandoned" under RCRA.



## Environment and Natural Resources Division

Environmental Enforcement Section P.O. Box 7611 Telephone (202) 514-2068 Facsimile (202) 616-6584

Washington, DC 20044-7611

- To the extent Chemetco has attempted to recycle or use the waste slag as a product, it has done so in a way which relies on speculative accumulation of the slag on the facility grounds and which constitutes sham recycling or relies on a use in a manner constituting disposal.
- The proposed use of Chemetco's slag as an additive to cement (See Appendix 5 to your March 9, 2000 letter, entitled, "Chemetco Slag Issues"), will not change this determination.

Because the slag is a solid waste, 35 Ill. Adm. Code 722.111and 40 C.F.R. § 262.11 require that Chemetco determine whether Chemetco's waste slag also is a "hazardous waste." Chemetco acknowledged the applicability of the hazardous waste determination requirement in 1988 by applying the then applicable toxicity test, the "EP Tox" test, to its slag. There are still many questions about whether that testing showed the slag to be non-hazardous. However, this question is moot because no wastes were "grand fathered" as being non-hazardous by virtue of the old EP Tox rule. Thus, there is no legal relevance attached to the 1988 characterization of the slag using that rule.

As you know, the Toxicity Characteristic Leaching Procedure ("TCLP"), which was developed pursuant to the Hazardous and Solid Waste Amendments of 1984, became effective on September 25, 1990, and applies to secondary copper smelting operations such as Chemetco's. The TC rule required generators to determine if their waste was hazardous under TCLP, including wastes previously tested under EP Tox. Guidance documents issued by EPA

<u>Id.</u>, at 11829. Similarly, an April 16, 1991 letter from EPA's Office of Solid Waste and Emergency Response ("OSWER") to the Chief Operating Officer of United Marketing International (EPA/OSWER Doc. No. 11599), states that generators need not test their waste, but confirms that generators are required to be correct

<sup>&</sup>lt;sup>1</sup> The preamble to the TC-rule, 40 C.F.R. § 262.11, states, "the regulations do not require testing; a generator may apply knowledge of the waste to determine if it is hazardous." 55 Fed. Reg. 11798, 11806 (Mar. 29, 1990). However, the preamble clearly contemplates that a generator's failure to perform a redetermination will subject the generator to liability:

While the Agency believes that a testing requirement could improve the Agency's enforcement tools, the Agency believes that the current requirements for hazardous waste determinations are not ineffective because many generators do have sufficient knowledge to make a determination without a test. The Agency further believes that liability for incorrect determinations provides a strong incentive for not misclassifying hazardous wastes as non-hazardous.



**Environment and Natural Resources Division** 

Environmental Enforcement Section P.O. Box 7611 Telephone (202) 514-2068 Facsimile (202) 616-6584

Washington, DC 20044-7611

advise generators that they need not *test* their waste to determine if it is hazardous, but emphasize that incorrect determinations subject generators to liability under RCRA. Here, Chemetco either failed to undertake the required re-determination or failed to disclose the results of its determination to EPA and the State. In any event, the TCLP sample results for every sample of Chemetco's slag taken by U.S. EPA exhibited the characteristic of toxicity due to lead content.

Exhibit 5 of your March 9, 2000 letter also discusses the statistical validity and representativeness of the waste pile samples taken by EPA. The definition of "representative sample" set forth at 40 C.F.R.§ 260.10 states that the term "means a sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole." In this case, given what is known about the types of slag Chemetoo has produced and how such types of slag are created, and the nature of Chemetoo's operation, EPA has no reason to believe that the slag in one area of the pile varies to any legally significant degree with other sections of the slag pile such that any difference would change the regulatory status of the slag, especially as to lead content. Nonetheless, EPA took 20 samples from various parts of the waste slag pile on Chemetco's property, i.e., 17 composite samples and 3 grab samples. We previously provided you a detailed description of the field sampling protocol and sampling procedures used in that investigation. It is EPA's position that the protocol and procedures followed by EPA produced a statistically valid representative analysis of the slag pile in compliance with the rule cited above.

It is also EPA's position that, absent information to the contrary, the results of the sampling and the magnitude of the exceedance over the lead standard address any representa-tiveness assertion that you might raise. The regulatory preamble to certain regulatory amendments proposed on Feb. 8, 1990, states:

If a sample possesses the property of interest, or contains the constituent at a high enough level relative to the regulatory threshold, then the population from which the sample was drawn must also possess the property of interest or contain that constituent. Depending on the degree to which the property of interest is exceeded, testing of samples which represent all aspects of the waste or other material may not be necessary to prove that the waste is subject to regulation.

in their determinations.

<sup>&</sup>lt;sup>2</sup>On January 23, 1989, EPA proposed amending its hazardous waste testing and monitoring regulations under Subtitle C of RCRA by: (1) Incorporating the Third Edition of "Test Methods for



**Environment and Natural Resources Division** 

Environmental Enforcement Section P.O. Box 7611 Telephone (202) 514-2068 Facsimile (202) 616-6584

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55 Fed. Reg. 4441 (Feb. 8, 1990). <sup>2</sup> This is precisely what the sample results show. Not only were all 20 samples taken from the waste slag pile in excess of the TCLP regulatory limit of 5mg/l (for lead), but nearly all of the sample results were at least two times over the limit. Further, the statistical mean of the lead samples was 35.2 mg/l, with a 95 percent confidence level of 9.47. This indicates that 95 percent of all the TCLP lead results are between 25.7 and 44.7mg/l. The confidence level indicates that 95 percent of the slag pile area which was characterized has a TCLP limit of 25.7 mg/l. This figure is over 5 times the regulatory limit. Such results are at a high enough level compared to the regulatory threshold as to negate the need for further testing.

Finally, your letter discusses in detail the TCLP and Chemetco's position regarding the applicability of the Synthetic Precipitation Leaching Procedure ("SPLP"). EPA's regulations require the use of TCLP in hazardous waste determinations at secondary copper facilities such as Chemetco's. Under the regulation, EPA has no discretion to use other testing methods or to analyze criteria related to the whether the waste at issue is subject to the TCLP "mismanagement scenario." The cases cited in your letter involve (mostly unsuccessful) *challenges to regulations*, not application(s) of the test in the enforcement context. It is too late for Chemetco to challenge the regulation and its applicability to the Hartford Facility. This being the case, the SPLP sample results simply are irrelevant for hazardous waste determination purposes.

In short, because the waste slag exceeds the TCLP standard for lead, and because the sample was representative, it is EPA' position that the slag is a hazardous waste under RCRA.

Evaluating Solid Waste, Physical/Chemical Methods," (SW-846) into the RCRA regulations; (2) updating SW-846 with additional methods and information; and (3) mandating minimum Quality Control (QC) procedures for all RCRA testing. (54 Fed. Reg. 3212-3229, Jan.23, 1989). In response to comments, EPA proposed, in addition to the option of promulgating the rulemaking as proposed, a number of technical modifications and/or clarifications to the Third Edition of SW-846 and the inclusion of specific QC procedures in SW-846, to be incorporated as Chapter One of SW-846. EPA also proposed deleting appendices III and X to 40 C.F.R. part 261. As such, EPA reopened the comment period to receive comments on the new options and the deletion of appendices III and X. See 55 Fed. Reg. 4440 (Feb. 8, 1990).



## **Environment and Natural Resources Division**

Environmental Enforcement Section P.O. Box 7611

Telephone (202) 514-2068 Facsimile (202) 616-6584

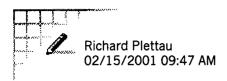
Washington, DC 20044-7611

We look forward to further discussions on this topic, as well as to our discussions next week concerning the proposed partial consent decree.

Sincerely,

Gregory L. Sukys

cc: James Morgan, Esq. Chris Perzan, Esq. Tom Martin. Esq. Andrew Doyle, Esq. C. Rice, Esq. M. Andrews, Esq.



To: Thomas Martin

Subject: Re: conference calls

On February 23: you have 8 lines for each of two calls. The Gateway call from 9:00 -- 11:00 and the Chemetco call from 2:00 -- 4:00 both have the same call in number: 202-260-7280, access code 3664 # (room 1310 is booked from 9:00 -- 12:00 and from 1:00 -- 5:00 on this day)

**On February 26:** you have 5 lines from 8:00 -- 4:00 pm. The call in no is: **202-260-8330**, access code **2034** #

(I have sent an E-mail to Francis Cox requesting a room and phone for 12 -- 20 people for all day).

## FLYNN & GUYMON

**ATTORNEYS** 

23 PUBLIC SQUARE, SUITE 440

PATRICK M. FLYNN DAVID E. GUYMON CARLA J. EHLERS

BELLEVILLE, ILLINOIS 62220

618-233-0480 FAX 618-233-0601

HAROLD BALTZ (1904-1970) OTIS E. GUYMON (1908-1971)

#### February 7, 2001

U.S. District Clerk U.S. District Court 750 Missouri Avenue East St. Louis, IL 62201

> United States of America v. Chemetco, Inc. In re:

No. 00-670-DRH

Dear Sir:

Please file my enclosed Entry of Appearance in the above matter.

Per Certificate of Service, a copy of the Entry of Appearance is being forwarded to all attorneys of record.

Thank you.

Sincerely yours,

Patrick M. Flynn

PMF:ek

Enc.

cc:

Mr. Gregory L. Sukys
Mr. Andrew J. Doyle
Mr. Gerald M. Burke
Mr. Thomas J. Martin
Mr. Jeffery M. Trevino

Ms. Cassandra Rice Ms. Mary Andrews

Mr. John F. Cowling

## U.S. ENVIRONMENTAL PROTECTION AGENCY

**LEB** 1 2 5001

CONNSEL
OFFICE OF REGIONAL

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

)	
)	
)	Cause No. 00-670-DRH
) )	
)	·
	) ) ) ) ) )

#### **ANSWER OF DEFENDANT CHEMETCO**

Defendant Chemetco, Inc., for its answer to plaintiff's Complaint, states as follows:

- 1. Chemetco admits that plaintiff purports to bring this action as described in the first sentence of paragraph 1 of plaintiff's Complaint. Chemetco denies the remaining allegations contained in paragraph 1 of plaintiff's Complaint.
  - 2. Chemetco denies the allegations of paragraph 2 of plaintiff's Complaint.
  - 3. Chemetco denies the allegations of paragraph 3 of plaintiff's Complaint.
- 4. Chemetco is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4 of plaintiff's Complaint, and therefore, denies those allegations.
  - 5. Chemetco admits the allegations contained in paragraph 5 of plaintiff's Complaint.
  - 6. Chemetco admits the allegations contained in paragraph 6 of plaintiff's Complaint.
  - 7. Chemetco admits the allegations of paragraph 7 of plaintiff's Complaint.
  - 8. Chemetco denies the allegations of paragraph 8 of plaintiff's Complaint.
- 9. Chemetco admits the allegations of paragraph 9 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
  - 10. Chemetco admits the allegations of paragraph 10 of plaintiff's Complaint, but denies

that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.

- 11. Chemetco admits the allegations of paragraph 11 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 12. Chemetco admits the allegations of paragraph 12 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 13. Chemetco admits the allegations of paragraph 13 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 14. Chemetco admits the allegations of paragraph 14 of plaintiff's Complaint, but denies that 40 C.F.R. §232.2 is authorized by section 502(14) of the CWA.
- 15. Chemetco admits the allegations of paragraph 15 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 16. Chemetco admits the allegations of paragraph 16 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 17. Chemetco admits the allegations of paragraph 17 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 18. Chemetco admits the allegations of paragraph 18 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's

- 19. Chemetco admits the allegations of paragraph 19 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 20. Chemetco admits the allegations of paragraph 20 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 21. Chemetco admits the allegations of paragraph 21 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 22. Chemetco admits the allegations of paragraph 22 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 23. Chemetco admits the allegations of paragraph 23 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 24. Chemetco admits the allegations of paragraph 24 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint.
- 25. Chemetco admits the allegations of paragraph 25 of plaintiff's Complaint, but denies that the statutes cited have any application to Chemetco under the allegations of plaintiff's Complaint and denies that the definition of wetlands in 40 C.F.R. §§122.2 and 232.2 are authorized by the CWA.
  - 26. Chemetco admits the allegations contained in paragraph 26 of plaintiff's Complaint.

- 27. Chemetco admits the allegations contained in paragraph 27 of plaintiff's Complaint.
- 28. Chemetco admits the allegations contained in paragraph 28 of plaintiff's Complaint.
- 29. Chemetco admits that allegations contained in paragraph 29 of plaintiff's Complaint.
- 30. Chemetco admits that the 1996 NPDES Permit authorized Chemetco to discharge storm water into Long Lake, but denies that Long Lake is a "navigable water" under the CWA. Chemetco denies the allegations contained in paragraph 30 to the extent they are not admitted above.
  - 31. Chemetco admits the allegations contained in paragraph 31 of plaintiff's Complaint.
  - 32. Chemetco admits the allegations contained in paragraph 32 of plaintiff's Complaint.
  - 33. Chemetco admits the allegations contained in paragraph 33 of plaintiff's Complaint.
  - 34. Chemetco admits the allegations contained in paragraph 34 of plaintiff's Complaint.
- 35. Chemetco admits that the storm water pollution prevention plan was submitted and reviewed, but denies the remaining portions of paragraph 35 of plaintiff's Complaint.
  - 36. Chemetco denies the allegations contained in paragraph 36 of plaintiff's Complaint.
- 37. Chemetco admits that USEPA and IEPA conducted an inspection on or about September 18, 1986 as alleged in paragraph 37 of plaintiff's Complaint. Chemetco denies the remaining allegations contained in paragraph 37 of plaintiff's Complaint.
- 38. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 38 of plaintiff's Complaint, and, therefore, denies those allegations.
- 39. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 39 of plaintiff's Complaint, and, therefore, denies those allegations.
  - 40. Chemetco denies the allegations contained in paragraph 40 of plaintiff's Complaint.

- 41. Chemetco denies the allegations contained in paragraph 41 of plaintiff's Complaint.
- 42. Chemetco denies the allegations contained in paragraph 42 of plaintiff's Complaint.
- 43. Chemetco denies the allegations contained in paragraph 43 of plaintiff's Complaint.
- 44. Chemetco denies the allegations contained in paragraph 44 of plaintiff's Complaint.
- 45. Chemetco denies the allegations contained in paragraph 45 of plaintiff's Complaint.
- 46. Chemetco denies the allegations contained in paragraph 46 of plaintiff's Complaint.
- 47. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 47 of plaintiff's Complaint, and, therefore, denies those allegations.
- 48. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 48 of plaintiff's Complaint, and, therefore, denies those allegations.
- 49. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 49 of plaintiff's Complaint, and, therefore, denies those allegations.
- 50. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 50 of plaintiff's Complaint, and, therefore, denies those allegations.
  - 51. Chemetco denies the allegations contained in paragraph 51 of plaintiff's Complaint.
  - 52. Chemetco denies the allegations contained in paragraph 52 of plaintiff's Complaint.
  - 53. Chemetco admits the allegations contained in paragraph 53 of plaintiff's Complaint.
- 54. Chemetco admits that paragraph 54 of plaintiff's Complaint paraphrases portions of the Administrative Order. Chemetco denies the allegations contained in paragraph 54 of plaintiff's Complaint, to the extent that they are not admitted above.

- 55. Chemetco denies the allegations contained in paragraph 55 of plaintiff's Complaint.
- 56. Chemetco admits the allegations contained in paragraph of 56 of plaintiff's Complaint.
- 57. Chemetco admits the allegations contained in paragraph of 57 of plaintiff's Complaint.
- 58. Chemetco admits the allegations contained in paragraph of 58 of plaintiff's Complaint.
- 59. Chemetco admits the allegations contained in paragraph of 59 of plaintiff's Complaint.
- 60. Chemetco admits the allegations contained in paragraph of 60 of plaintiff's Complaint.
- 61. Chemetco admits the allegations contained in paragraph of 61 of plaintiff's Complaint.
- 62. Chemetco admits the allegations contained in paragraph of 62 of plaintiff's Complaint.
- 63. Chemetco admits the allegations contained in paragraph of 63 of plaintiff's Complaint.
- 64. Chemetco admits the allegations contained in paragraph of 64 of plaintiff's Complaint.
- 65. Chemetco admits the allegations contained in paragraph of 65 of plaintiff's Complaint.
- 66. Chemetco admits the allegations contained in paragraph of 66 of plaintiff's Complaint.
  - 67. Chemetco admits the allegations contained in paragraph of 67 of plaintiff's

- 68. Chemetco admits the allegations contained in paragraph of 68 of plaintiff's Complaint.
- 69. Chemetco admits the allegations contained in paragraph of 69 of plaintiff's Complaint.
- 70. Chemetco admits the allegations contained in paragraph of 70 of plaintiff's Complaint.
- 71. Chemetco admits the allegations contained in paragraph of 71 of plaintiff's Complaint.
- 72. Chemetco admits the allegations contained in paragraph of 72 of plaintiff's Complaint.
- 73. Chemetco admits the allegations contained in paragraph of 73 of plaintiff's Complaint.
- 74. Chemetco admits the allegations contained in paragraph of 74 of plaintiff's Complaint.
- 75. Chemetco admits the allegations contained in paragraph of 75 of plaintiff's Complaint.
- 76. Chemetco admits the allegations contained in paragraph of 76 of plaintiff's Complaint.
- 77. Chemetco admits the allegations contained in paragraph of 77 of plaintiff's Complaint.
- 78. Chemetco admits the allegations contained in paragraph of 78 of plaintiff's Complaint.
  - 79. Chemetco admits the allegations contained in paragraph of 79 of plaintiff's

- 80. Chemetco admits the allegations contained in paragraph 80 of plaintiff's Complaint.
- 81. Chemetco denies the allegations contained in paragraph 81 of plaintiff's Complaint.
- 82. Chemetco admits the allegations contained in paragraph of 82 of plaintiff's Complaint.
- 83. Chemetco admits the allegations contained in paragraph of 83 of plaintiff's Complaint.
- 84. Chemetco admits the allegations contained in paragraph of 84 of plaintiff's Complaint.
- 85. Chemetco admits the allegations contained in paragraph of 85 of plaintiff's Complaint.
- 86. Chemetco admits the allegations contained in paragraph of 86 of plaintiff's Complaint.
- 87. Chemetco admits the allegations contained in paragraph of 87 of plaintiff's Complaint.
- 88. Chemetco admits the allegations contained in paragraph of 88 of plaintiff's Complaint.
- 89. Chemetco admits the allegations contained in paragraph of 89 of plaintiff's Complaint.
- 90. Chemetco admits that its operations produce byproducts with various characteristics. Chemetco denies the portions of paragraph 90 of plaintiff's Complaint not admitted above.
  - 91. Chemetco denies the allegations contained in paragraph 91 of plaintiff's Complaint.
  - 92. Chemetco denies the allegations contained in paragraph 92 of plaintiff's Complaint.
  - 93. On information and belief, Chemetco admits the allegations contained in paragraph

93 of plaintiff's Complaint.

- 94. On information and belief, Chemetco admits the allegations contained in paragraph 94 of plaintiff's Complaint.
  - 95. Chemetco denies the allegations contained in paragraph 95 of plaintiff's Complaint.
- 96. Chemetco admits that USEPA and IEPA conducted an inspection on or about September 18, 1986 as alleged in paragraph 96 of plaintiff's Complaint. Chemetco is without sufficient knowledge or information with which to form a belief as to the remaining allegations contained in paragraph 96 of plaintiff's Complaint, and, therefore, denies those allegations.
  - 97. Chemetco denies the allegations contained in paragraph 97 of plaintiff's Complaint.
  - 98. Chemetco denies the allegations contained in paragraph 98 of plaintiff's Complaint.
  - 99. Chemetco denies the allegations contained in paragraph 99 of plaintiff's Complaint.
- 100. Chemetco denies the allegations contained in paragraph 100 of plaintiff'sComplaint.
- 101. Chemetco denies the allegations contained in paragraph 101 of plaintiff'sComplaint.
- 102. Chemetco denies the allegations contained in paragraph 102 of plaintiff's Complaint.
- 103. Chemetco admits that there was an inspection on or about September 18, 1986. Chemetco is without sufficient knowledge or information with which to form a belief as to the remaining allegations contained in paragraph 103, and, therefore, denies those allegations.
- 104. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 104 of plaintiff's Complaint, and, therefore, denies those allegations.
  - 105. Chemetco is without sufficient knowledge or information to form as belief as to

the truth of the allegations contained in paragraph 105 of plaintiff's Complaint, and, therefore, denies those allegations.

- 106. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 106 of plaintiff's Complaint, and, therefore, denies those allegations.
- 107. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 107 of plaintiff's Complaint, and, therefore, denies those allegations.
- 108. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 108 of plaintiff's Complaint, and, therefore, denies those allegations.
- 109. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 109 of plaintiff's Complaint, and, therefore, denies those allegations.
- 110. Chemetco admits that IEPA issued a Violation Notice to Chemetco on or about March 12, 1997. Chemetco denies the remaining allegations contained in paragraph 110 not admitted above.
- 111. Chemetco is without sufficient knowledge or information to form as belief as to the truth of the allegations contained in paragraph 111 of plaintiff's Complaint, and, therefore, denies those allegations.
- 112. Chemetco denies the allegations contained in paragraph 112 of plaintiff'sComplaint.
- 113. Chemetco denies the allegations contained in paragraph 113 of plaintiff's Complaint.

114. Chemetco denies the allegations contained in paragraph 114 of plaintiff's Complaint. 115. Chemetco denies the allegations contained in paragraph 115 of plaintiff's Complaint. 116. Chemetco denies the allegations contained in paragraph 116 of plaintiff's Complaint. Chemetco denies the allegations contained in paragraph 117 of plaintiff's 117. Complaint. Chemetco denies the allegations contained in paragraph 118 of plaintiff's 118. Complaint. Chemetco denies the allegations contained in paragraph 119 of plaintiff's 119. Complaint. Chemetco denies the allegations contained in paragraph 120 of plaintiff's 120. Complaint. Chemetco denies the allegations contained in paragraph 121 of plaintiff's 121. Complaint. Chemetco denies the allegations contained in paragraph 122 of plaintiff's 122. Complaint. Chemetco denies the allegations contained in paragraph 123 of plaintiff's 123. Complaint. Chemetco denies the allegations contained in paragraph 124 of plaintiff's 124. Complaint. Chemetco denies the allegations contained in paragraph 125 of plaintiff's 125.

- 126. Chemetco denies the allegations contained in paragraph 126 of plaintiff's Complaint.
- 127. Chemetco denies the allegations contained in paragraph 127 of plaintiff's Complaint.
- 128. Chemetor realleges and incorporates by reference it response to paragraphs 1 through 23 and 26 through 28 as its response to paragraph 128 of plaintiff's Complaint.
- 129. Chemetco denies the allegations contained in paragraph 129 of plaintiff's Complaint.
- 130. Chemetco denies the allegations contained in paragraph 130 of plaintiff's Complaint.
- 131. Chemetco denies the allegations contained in paragraph 131 of plaintiff's Complaint.
- 132. Chemetco denies the allegations contained in paragraph 132 of plaintiff's Complaint.
- 133. Chemetco denies the allegations contained in paragraph 133 of plaintiff's Complaint.
- 134. Chemetor realleges and incorporates by reference it response to paragraphs 1 through 23 and 29 through 36 as its response to paragraph 134 of plaintiff's Complaint.
- 135. Chemetco denies the allegations contained in paragraph 135 of plaintiff'sComplaint.
- 136. Chemetco denies the allegations contained in paragraph 136 of plaintiff's Complaint.
- 137. Chemetco denies the allegations contained in paragraph 137 of plaintiff's Complaint.

- 138. Chemetco denies the allegations contained in paragraph 138 of plaintiff's Complaint.
- 139. Chemetco denies the allegations contained in paragraph 139 of plaintiff's Complaint.
- 140. Chemetor realleges and incorporates by reference it response to paragraphs 1 through 23 and 37 through 50 as its response to paragraph 140 of plaintiff's Complaint.
- 141. Chemetco denies the allegations contained in paragraph 141 of plaintiff's Complaint.
- 142. Chemetco denies the allegations contained in paragraph 142 of plaintiff's Complaint.
- 143. Chemetco denies the allegations contained in paragraph 143 of plaintiff'sComplaint.
- 144. Chemetco denies the allegations contained in paragraph 144 of plaintiff's Complaint.
- 145. Chemetco denies the allegations contained in paragraph 145 of plaintiff's Complaint.
- 146. Chemetco denies the allegations contained in paragraph 146 of plaintiff's Complaint.
- 147. Chemetco denies the allegations contained in paragraph 147 of plaintiff's Complaint.
- 148. Chemetco denies the allegations contained in paragraph 148 of plaintiff's Complaint.
- 149. Chemetco denies the allegations contained in paragraph 149 of plaintiff's Complaint.

- 150. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 16, 24 through 25, and 51through 55 as its response to paragraph 150 of plaintiff's Complaint.
- 151. Chemetco denies the allegations contained in paragraph 151 of plaintiff's Complaint.
- 152. Chemetco denies the allegations contained in paragraph 152 of plaintiff'sComplaint.
- 153. Chemetco denies the allegations contained in paragraph 153 of plaintiff's Complaint.
- 154. Chemetco denies the allegations contained in paragraph 154 of plaintiff's Complaint.
- 155. Chemetco denies the allegations contained in paragraph 155 of plaintiff's Complaint.
- 156. Chemetco denies the allegations contained in paragraph 156 of plaintiff's Complaint.
- 157. Chemetco denies the allegations contained in paragraph 157 of plaintiff's Complaint.
- 158. Chemetco denies the allegations contained in paragraph 158 of plaintiff's Complaint.
- 159. Chemetco denies the allegations contained in paragraph 159 of plaintiff's Complaint.
- 160. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 16, 24 through 25, and 51through 55 as its response to paragraph 160 of plaintiff's Complaint.

- 161. Chemetco denies the allegations contained in paragraph 161 of plaintiff's Complaint.
- 162. Chemetco denies the allegations contained in paragraph 162 of plaintiff's Complaint.
- 163. Chemetco denies the allegations contained in paragraph 163 of plaintiff'sComplaint.
- 164. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 8 and 56through 102 as its response to paragraph 164 of plaintiff's Complaint.
- 165. Chemetco denies the allegations contained in paragraph 165 of plaintiff's Complaint.
- 166. Chemetco denies the allegations contained in paragraph 166 of plaintiff's Complaint.
- 167. Chemetco denies the allegations contained in paragraph 167 of plaintiff's Complaint.
- 168. Chemetco denies the allegations contained in paragraph 168 of plaintiff's Complaint.
- 169. Chemetco denies the allegations contained in paragraph 169 of plaintiff'sComplaint.
- 170. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 8, 56 through 95, and 103 through 116 as its response to paragraph 170 of plaintiff's Complaint.
- 171. Chemetco denies the allegations contained in paragraph 171 of plaintiff's Complaint.
  - 172. Chemetco denies the allegations contained in paragraph 172 of plaintiff's

- Complaint.
- 173. Chemetco denies the allegations contained in paragraph 173 of plaintiff's Complaint.
- 174. Chemetco denies the allegations contained in paragraph 174 of plaintiff's Complaint.
- 175. Chemetco denies the allegations contained in paragraph 175 of plaintiff's Complaint.
- 176. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 8, 56 through 95, and 117 through 125 as its response to paragraph 176 of plaintiff's Complaint.
- 177. Chemetco denies the allegations contained in paragraph 177 of plaintiff's Complaint.
- 178. Chemetco denies the allegations contained in paragraph 178 of plaintiff's Complaint.
- 179. Chemetco denies the allegations contained in paragraph 179 of plaintiff's Complaint.
- 180. Chemetco denies the allegations contained in paragraph 180 of plaintiff's Complaint.
- 181. Chemetco denies the allegations contained in paragraph 181 of plaintiff's Complaint.
- 182. Chemetco denies the allegations contained in paragraph 182 of plaintiff's Complaint.
- 183. Chemetco denies the allegations contained in paragraph 183 of plaintiff's Complaint.

- 184. Chemetco realleges and incorporates by reference it response to paragraphs 1 through 8, 56 through 95, and 117through 125 as its response to paragraph 184 of plaintiff's Complaint.
- 185. Chemetco denies the allegations contained in paragraph 185 of plaintiff's Complaint.
- 186. Chemetco denies the allegations contained in paragraph 186 of plaintiff's Complaint.
- 187. Chemetco denies the allegations contained in paragraph 187 of plaintiff's Complaint.
- 188. Chemetco denies the allegations contained in paragraph 188 of plaintiff's Complaint.
- 189. Chemetco denies the allegations contained in paragraph 189 of plaintiff's Complaint.
- 190. Chemetco denies the allegations contained in paragraph 190 of plaintiff'sComplaint.
- 191. Chemetor realleges and incorporates by reference it response to paragraphs 1 through 8, 56 through 125 and 127 as its response to paragraph 191 of plaintiff's Complaint.
- 192. Chemetco denies the allegations contained in paragraph 192 of plaintiff's Complaint.
- 193. Chemetco denies the allegations contained in paragraph 193 of plaintiff's Complaint.
- 194. Chemetco denies the allegations contained in paragraph 194 of plaintiff's Complaint.

- 195. Chemetco denies the allegations contained in paragraph 195 of plaintiff's Complaint.
- 196. Further answering, Chemetco states that plaintiff's Complaint fails to state a claim or a cause of action upon which relief may be granted.
- 197. Further answering, Chemetco states that plaintiff's claims are barred by the applicable statute of limitations.
- 198. Further answering, Chemetco states that plaintiff's claims are barred by the doctrines of estoppel, acquiescence, laches, waiver, or unclean hands.
- 199. Further answering, Chemetco states that plaintiff's First through Fifth claims fail to state a claim because the Clean Water Act is not applicable to the areas on or around Chemetco's property.
- 200. Further answering, Chemetco states that plaintiff's claims for penalties are in the nature of punitive damages and are barred for one or more of the following reasons:
  - (a) The imposition of punitive damages, as sought by plaintiff in this case, would constitute an excessive fine in violation of the Eighth Amendment to the United States Constitution.
  - (b) An award of punitive damages is barred by the Eighth Amendment to the United States Constitution.
  - (c) The recovery of punitive damages by plaintiff in this case is barred by the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States, because the standards and procedures for determining and reviewing such awards under applicable law do not sufficiently ensure meaningful individualized assessment of appropriate deterrence and retribution.

- (d) The recovery of punitive damages by plaintiff in this case is barred by the due process clause of the Fifth and Fourteenth Amendments to the Constitution of the United States because there are no realistic standards or limits imposed on the amount of punitive damages which may be awarded, and no required relationship between the actual damages sustained and the amount of punitive damages which may be awarded.
- (e) The recovery of punitive damages by plaintiff in this case is barred by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because the vague standard employed in punitive damages cases results in extremely disparate results among similar defendants accused of similar conduct.
- (f) The recovery of punitive damages by plaintiff's in this case is barred by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, since the purpose of punitive damages is to punish and deter, and there are not adequate procedural safeguards in place to protect the Equip for Equality Defendants right against self-incrimination, right to proof beyond a reasonable doubt and right to freedom from unreasonable searches and seizures in this case.

- 201. Further answering, Chemetco states that the claims for penalties are in the nature of claims for recovery of punitive damages by plaintiff in this case and are barred by the Illinois Constitution of 1970.
- 202. Further answering, Chemetco states that any release of hazardous wastes or other substances and/or any damages resulting therefrom were caused solely by the acts or omissions of persons other than Chemetco.
- 203. Chemetco further reserves the right to amend these affirmative defenses to assert additional affirmative defenses which become available in this matter.

WHEREFORE, having fully answered, defendant Chemetco Inc. prays to be dismissed with its costs, and for such other relief as the court deems just and proper.

Respectfully submitted,

ARMSTRONG TEASDALE LLP

John F. Cowling

One Metropolitan Square, Suite 2600

St. Louis, Missouri 63102-2740

(314) 621-5070

(314) 621-5065 (facsimile)

ATTORNEYS FOR DEFENDANT CHEMETCO, INC.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed first class, postage prepaid this 23th day of January 2001, to:

Gregory L. Sukys
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044

Andrew J. Doyle U.S. Department of Justice Environmental Defense Section P.O. Box 23986 Washington, D.C. 20026-3986

Thomas J. Martin Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604

Jeffery M. Trevino Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Boulevard Chicago, IL 60604 Gerald M. Burke Assistant U.S. Attorney Southern District of Illinois 9 Executive Drive, Suite 300 Fairview Heights, IL 62208

Cassandra Rice
U.S. EPA
Office of Enforcement and
Compliance Assurance
401 M. Street, S.W.
Washington, D.C. 20460

Mary Andrews
U.S. EPA
Office of Enforcement and
Compliance Assurance
401 M. Street, S.W.
Washington, D.C. 20460

#### ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



2009 ATALL STREET, COLUMNICAL TELENOIS 62234 THOMAS M. SKINNER, DIRECTOR

December 19, 2000

Thomas Martin
Office of Regional Counsel (C-14J),
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Re: 1198010003 -- Madison County

Chemetco, Inc. ILD048843809 Compliance File

Dear Tom,

Attached are the documents concerning the slag fine treatment that you requested. I have attached the following documents.

- 1. A December 31, 1997, letter from Bruce Hendrickson to Ed Bakowski (IEPA) and an attached Notice and Certification. This is the first letter the IEPA received about the slag treatment.
- 2. A plan titled <u>Chemetco, Inc. Waste Analysis Plan Treatment of Slag Fines October 23, 1997</u>. This is the plan that was followed for the treatment. I obtained this document during an October 1998 Compliance Evaluation Inspection.
- 3. November 13, 1997, analysis results from Midco Industries. These are the analysis of the untreated slag and the treated slag. Midco is somehow related to Chemetco. I think Chemetco owns Midco. Notice they are stamped "Confidential Attorney Client-Work Product".
- 4. August 11, 1998, letter from Bruce Hendrickson to Ed Bakowski stating Chemetco has sent the slag fines to the Roxana Landfill.
- 5. Copies of the three waste manifests dated August 13, 1998, for the off-site shipment of the slag.
- 6. Two letters concerning slag fines.

1198010003 -- Madison County

Chemetco, Inc.

Page 2 of 2

If you should need any further information, please do not hesitate to contact me at 618/346-5120.

Sincerely

Chris Cahnovsky, CHMM

**Environmental Protection Specialist** 

Bureau of Land

#### Enclosure

cc: BOL - Division Files

cc: BOL - Collinsville Files

cc: Chris Perzan - DLC

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

IMITED	STATES	OF	AMERICA.
UNITED	מבודנט	OI.	AMLIUCA.

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Civ. No. 00-670-DRH

CHEMETCO, INC.,

v.

Defendant.

#### PLAINTIFF'S INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 26 and Local Rule 26.1(a)(1), as well as the Court's Uniform Trial Practice and Procedures Order of January 4, 2001, Plaintiff hereby makes the following initial disclosures:

- I. The name, last known address and telephone number, of each person reasonably likely to have information that bears significantly on the claims and defenses identifying the subjects of the information.
  - Ward Lenz, Certified Professional Soil Scientist Enforcement Section Regulatory Branch St. Louis District U.S. Army Corps of Engineers 1222 Spruce Street St. Louis, MO 63103 (314) 331-8186

Mr. Lenz has information that Chemetco, Inc., discharged pollutants from a point source into navigable waters without a permit. More specifically, he has information that Chemetco, Inc., added solid waste, rock, sand, dirt, and industrial waste to wetlands, without a permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344. He has information about a Wetland Determination of September 4, 1997.

Karon Marzec, Chief
 Enforcement Section
 Regulatory Branch
 St. Louis District
 U.S. Army Corps of Engineers
 1222 Spruce Street
 St. Louis, MO 63103

Ms. Marzec has information that Chemetco, Inc., discharged pollutants from a point source into navigable waters without a permit. Specifically, she has information that Chemetco, Inc., added solid waste, rock, sand, dirt, and industrial waste to wetlands, without a permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344. She has information about a Wetland Determination of September 4, 1997.

3. Chris Cahnovsky, CHMM
Environmental Protection Specialist
Field Operations Specialist
Bureau of Land
Illinois Environmental Protection Agency
2009 Mall Street
Collinsville, IL 62234
(618) 346-5120

Mr. Cahnovsky has information that Chemetco, Inc., discharged pollutants from a point source into navigable waters without a permit. Specifically, he has information that over a number of years, Chemetco, Inc., added solid waste, rock, sand, dirt, and industrial waste from trucks, bulldozers, and backhoes, into wetlands, without a permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344. Mr. Cahnovsky also conducted RCRA inspections at the site. He observed an unauthorized zinc oxide discharge. Mr. Cahnovsky is familiar with the nature and appearance of the discharge, the overall nature, operation and appearance of the facility, and its waste handling, storage and disposal practices.

Ken Munsing, Chief
 Collinsville District
 Illinois Environmental Protection Agency
 2009 Mall Street
 Collinsville, IL 62234
 (618) 993-7200

Mr. Munsing has information that Chemetco, Inc., discharged pollutants from a point

source into navigable waters without a permit. Specifically, he has information that Chemetco, Inc., added solid waste, rock, sand, dirt, and industrial waste to wetlands, without a permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344.

# David W. Schulenberg Watershed and Non-Point Source Programs Branch Water Division Region 5 U.S. Environmental Protection Agency 77 West Jackson Boulevard (WW-16J) Chicago, IL 60604-3590 (312) 886-6680

Mr. Schulenberg has information that Chemetco, Inc., discharged pollutants from a point source into navigable waters without a permit. Specifically, he has information that over a number of years, Chemetco, Inc., added solid waste, rock, sand, dirt, and industrial waste from trucks, bulldozers, and backhoes, into wetlands, without a permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344. He has information about the appropriateness and extent of a civil penalty.

# William Tong Environmental Scientist Water Enforcement & Compliance Assurance Branch U.S. EPA - Region 5 77 W. Jackson Blvd. Telephone: (312) 886-9380

Mr. Tong has conducted inspections of the site and has information relating to the Clean Water Action (CWA) NPDES and storm water claims. Mr. Tong is familiar with facility's sewer and water treatment systems. Mr. Tong has information about the appropriateness and extent of a civil penalty.

7. John Gaitskill
Environmental Engineer
Waste, Pesticides and Toxics Division
U.S. EPA - Region 5
77 W. Jackson Blvd.
Telephone: (312) 886-6795

Mr. Gaitskill observed site on the day a discharge was discovered. Mr. Gaitskill is familiar with the physical description of the discharge pipe, the matter being discharged, the

discharge area and Chemetco's response to discharge.

#### 8. Patrick Kuefler

Environmental Scientist
Waste, Pesticides and Toxics Division
U.S. EPA - Region 5
77 W. Jackson Blvd.

Telephone: (312) 353-6268

Mr. Kuefler conducted Resource Conservation and Recovery Act (RCRA) sampling inspection at the site. He observed the unauthorized zinc oxide discharge area. Mr. Kuefler is familiar with the facility and its waste handling, storage and disposal practices. He also has information about the appropriateness and extent of a civil penalty.

#### 9. Bradley Cobe Venner,

Statistician (Ph.D. expected May, 2001)

U.S. EPA

Building 53

P.O. Box 25227

Denver Federal Building

Denver, CO 80225-0227

Telephone: 303-236-6123

Mr. Venner is familiar with issues relating to the representativeness of the sampling of the slag waste pile.

#### 10. Christopher Black

Geologist

Waste, Pesticides and Toxics Division

U.S. EPA - Region 5

77 W. Jackson Blvd.

Telephone: (312) 886-1451

Mr. Black is familiar with the need for and the types of corrective action necessary at the facility under RCRA

#### 11. Joseph N. Mahlandt, P.E.

Regional Manager

Bureau of Water

Water Pollution Control Division

Illinois Environmental Protection Agency

2009 Mall Street Collinsville, IL 62234

Telephone: 618/346-5120.

Mr. Mahlandt conducted inspections relating to Chemetco's water discharges.

#### 12. Kenneth Mensing

Regional Manager

Field Operations Section

Bureau of Land

Illinois Environmental Protection Agency

2009 Mall Street

Collinsville, IL 62234

Telephone: 618/346-5120.

Mr. Mensing observed site on the day the discharge was discovered. He is familiar with the physical description of the discharge pipe, the matter being discharged, the discharge area and Chemetco's response to discharge.

#### 13. Gina Search

Regional Geologist

Bureau of Land

Illinois Environmental Protection Agency

2009 Mall Street

Collinsville, IL 62234

Telephone: 618/346-5120.

Ms. Search is familiar with groundwater conditions at site.

#### 14. John Koehnen

Regional Manager

Techlaw Inc.

20 North Wacker Drive

**Suite 1260** 

Chicago, IL 60606

Telephone: 312/578-8900.

Mr. Koehnen is a contractor to U.S. EPA. He developed and implemented the sampling plan of May, 1998.

Steven Hoffman
Environmental Protection Specialist
Office of Solid Waste
U.S. EPA
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460-8845

Mr. Hoffman is familiar with application of the Bevill exclusion and applicability of the TCLP for mining and mineral processing wastes

16. Gregory Helms
Environmental Protection Specialist
Office of Solid Waste
U.S. EPA
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460-8845

Mr. Helms is familiar with the use and applicability of the TCLP to a variety of wastes.

- II. A general description, including location, of all documents, data, compilations, and tangible things in the possession, custody or control of that party that are likely to bear significantly on the claims and defenses.
  - 1. U.S. EPA Draft Notification Letter to the State of Illinois.
  - 2. Dun & Bradstreet Report on Chemetco, dated September 12, 1997.
  - 3. Chemetco, Inc., Hartford, Illinois, Aerial Photographs, dated 1974 1996.
  - 4. U.S. EPA Wetland Delineation, dated September 22, 1997.
  - 5. U.S.D.A. Soil Survey for the County of Madison, State of Illinois.
  - 6. U.S. Geological Service Map.
  - 7. Corps Cease and Desist Order to Chemetco, dated May 11, 1989.
  - 8. Corps Dredge and Fill Permit for Chemetco, dated September 21, 1996, and correspondence related thereto.
  - 9. U.S. EPA Administrative Order to Chemetco, dated September 24, 1997.

- 10. Site location maps and sample and location maps.
- 11. NPDES permits for Chemetco.
- 12. Process diagrams (schematic) for copper refining.
- 13. Table of CWA violations.
- 14. Topographic map (Hartford, IL) including facility area and Long Lake.
- 15. EPA Water Quality Criteria.
- U.S. EPA CWA §309(a) Administrative Order to and §308 Request For Information, issued to Chemetco, dated June 30, 1997; and response letters from Chemetco.
- 17. Correspondence received from State of Illinois from or regarding the Defendant.
- 18. State Notices of Noncompliance to Chemetco.
- 19. Discharge Monitoring Reports.
- 20. PCS Enforcement Actions Report.
- 21. U.S. EPA and Illinois EPA RCRA and CWA inspection reports.
- 22. U.S. EPA RCRA Information Requests and Defendant's Responses.
- 23. Defendant's Notifications of Hazardous Waste Activity for the facility pursuant to Section 3010 of RCRA for the generation and treatment/storage/disposal of hazardous waste, including toxic waste.
- 24. Sample results and analysis of impounded waste zinc oxide.
- 25. Chemetco's Storm Water Prevention Plans.
- Court transcripts and related exhibits from lawsuits involving Chemetco and from Illinois
   Pollution Control Board hearings.
- 27. Defendant's RCRA ground water reports.
- 28. Defendant's RCRA permit and plan applications.
- 29. Air lead samples results/NAAQS sampling results.

- 30. Documents relating to the sale and purported use of waste steams from the facility.
- 31. Sample results and analysis of waste refractory brick and gunning material.
- 32. Toxicity Characteristic Leaching Procedure (TCLP) analytical results from slag samples obtained by U.S. EPA on May 29, 1998.
- 33. 1998 Zinc Oxide Discharge Area Hazards Assessment Report.
- 34. National Enforcement and Investigations Center Statistical Analysis of Slag Sample Results The above-mentioned documents, data, compilations, and tangible things in the custody or control of the United States which bear on this case are all located at U.S. EPA Region 5, 77 W. Jackson Blvd, in Chicago, Illinois. Plaintiff has not waived any privilege with respect to the above mentioned documents, etc., by this initial disclosure.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General

Environment and Natural Resources

Division

Dated: 1/16/0/

GREGORY L. SUKYS

Environmental Enforcement Section

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044

(202) 514-2068/616-6584 (FAX)

ANDREW J. DOYLE

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**Environmental Defense Section** 

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MARY ANDREWS U.S. EPA Office of Enforcement and Compliance Assurance 401 M Street, S.W. Washington, D.C. 20460

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of January, 2001, I caused a true and accurate copy of the foregoing Plaintiff's Initial Disclosures to be served, through first class mail, as well as a courtesy copy via facsimile, on the following attorney for Defendant Chemetco, Inc.:

Mr. John F. Cowling, Esq. Armstrong Teasdale LLP One Metropolitan Square, Suite 2600 St. Louis, Missouri 63102-2740 (314) 621-5070 (314) 621-5065 (facsimile)

Attorney for the United States

PROFESSION OF THE STATE OF THE

9/28/2000

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and )	)		
PEOPLE OF THE STATE OF	)		
ILLINOIS, ex rel JAMES E.	)		
RYAN, Attorney General of	)		
the State of Illinois,	)		
Plaintiffs,	)		
vs.	Case	No.	00-670-DRH
	)	and	00-677-DRH
CHEMETCO, INC.,	)		
Defendant.	)		

#### AMENDED RESPONSE TO ILLINOIS' FIRST REQUEST FOR ADMISSIONS

Comes now Chemetco, Inc., by its attorneys, Flynn & Guymon, and for its Amended Response to Illinois' First Request For Admissions states:

- Defendant admits that there is metal bearing material in its Contractors' parking lot, but denies the remaining allegations of Paragraph 83.
- Defendant admits that there are copper parts in its Contractor's parking lot, but denies the remaining allegations of Paragraph 85.

CHEMETCO, INC.

Patrick M. Flynn

Flynn & Guymon

23 Public Square, Ste. 440

Belleville, IL 62220

618-233-0480

A.R.D.C. No. 00839868

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed first class, postage prepaid this 28th day of September, 2001, to:

- James L. Morgan, Senior Assistant Attorney General, 500 South Second Street, Springfield, IL 62706;
- Gregory L. Sukys, U.S. Department of Justice, Environmental Enforcement Section, P. O. Box 7611, Washington, D.C. 20044;
- Andrew J. Doyle, U.S. Department of Justice, Environmental Defense Section, P. O. Box 23986, Washington, D.C. 20026-3986;
- George von Stamwitz, Armstrong Teasdale LLP, One Metropolitan Square, Suite 2600, St. Louis, MO 63102-2740.

Patrick M. Flynn/

9/17/2000

## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois,

Plaintiffs,

v. Civ. No. 00-670-DRH (consolidated with 00-677-DRH) CHEMETCO, INC.,

Defendant.

# UNITED STATES' FIRST REQUESTS FOR ADMISSIONS AND SECOND SET OF INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff, the
United States of America, hereby serves the following first Requests for Admissions, and second set of
Interrogatories and Requests for the Production of Documents on Defendant Chemetco, Inc.

("Chemetco" or "Defendant").

#### **GENERAL INSTRUCTIONS**

For the purpose of these Requests for Admission, Interrogatories, and Requests for Production of Documents (collectively "Discovery Requests"), the following instructions apply.

- A. These Discovery Requests cover and relate to all information and documents which are in your possession, custody or control, or in the possession, custody or control of any of your directors, trustees, officers, employees, agents, servants, attorneys and assigns.
  - B. Each Request for Admission shall specifically be admitted or denied.

- C. If a matter contained in any Request for Admission cannot be admitted or denied, the reasons for this shall be set forth in detail in your Response to the Request for Admission.
  - D. A denial shall fairly meet the substance of the requested admission.
- E. When good faith requires you to qualify your answer or deny only a part of the matter for which a Request for Admission is requested, you must specify the portions of the Request that you admit and then deny or qualify your answer as to the remainder.
- F. Though you may consider a matter of which an admission is requested to present a genuine issue for trial, you may not on that ground alone, object to a request.
- G. When an individual interrogatory calls for an answer that involves more than one piece of information, each part of the answer is to be clearly set out so that it is understandable.
- H. When asked to identify any person, or the source of the information you provide is a person, provide the following information:
  - 1. if the person is a natural person, list the person's:
    - (a) full name;
    - (b) current business and residence address;
    - (c) current employer's name and address;
    - (d) all positions held with Defendant and dates in such positions; and
    - (e) business and residence phone numbers.
- 2. If the person is a corporation, partnership or other entity (other than a natural person), indicate:
  - (a) the type of entity;

- (b) the state and county of incorporation or organization, if any; and
- (c) the address of the entity's headquarters and principal offices.
- I. When asked to identify a document, or the source of your information is a document, list:
  - 1. its title or, if it has no title, its subject matter;
  - 2. its date of origin;
  - 3. the author or addressor;
  - 4. the addressee;
  - 5. the recipient(s) of all copies of the document; and
  - 6. the identity of all custodians of the document.

In lieu of identifying a document, you may attach a copy of such document to your answer.

- J. For each document produced, please indicate on the document or identify in some manner the number of the Request for Production of Documents (including any subpart thereof) to which it responds.
- K. If anything is deleted from a document produced, indicate the reason for the deletion and the subject matter of the deleted material.
- L. If any objection is made to any Discovery Request, state the basis for the objection.

  The reasons for your objection must be stated with particularity.
- M. You may not give lack of information or knowledge as a reason for failure to admit or deny a requested admission or answer an interrogatory unless you have made reasonable inquiry and unless the information known or readily obtainable by you is insufficient to enable you to admit or deny the matter for which an admission is requested, or to substantively answer an interrogatory. In such

case, you shall set forth the nature of the inquiry undertaken.

- N. If in responding to any discovery request posed by Plaintiff, Defendant determines it is aware of potentially responsive document(s), information, or communication(s), but Defendant wants to withhold such document, information, or communication in light of Defendant's interpretation of applicable law, Defendant shall provide a Privilege Log that states separately for each such document, piece of information, or communication, as applicable 1) the title and subject matter; 2) date; 3) author(s) / participant(s) (including their titles); 4) each recipient of the document, communication, or piece of information; and 5) each basis upon which the document, information, or communication is being withheld.
- O. This discovery request is directed to Defendant, as defined below, and embraces all information and documents over which Defendant (including officers, employees, agents, servants, representatives, its attorneys, or other persons directly or indirectly employed or retained by it, or anyone else acting on its behalf or otherwise subject to its control) has possession, custody, control, or access.
- P. Defined terms embrace not only the form of the word actually defined but also all variants of that word that can be made by adding and/or changing suffixes; thus, e.g., the definition given below for the word "Identify" also applies to the words "identified," "identify," "identifying," "identification," etc. Words used in the singular also shall be taken to mean and include the plural. Words used in the plural also shall be taken to mean and include the singular. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

- Q. When responding (by response, answer, objection, or otherwise) to each of the following interrogatories and requests for production of documents -- and each such response should be made individually -- please set out the discovery request immediately before setting out such response.
- R. Defendant shall serve its answers (including any objections) to these Discovery Requests within thirty days of the date this document is served on Defendant.
- S. Each interrogatory shall be answered separately and fully in writing and under oath.
- T. Identify each person answering, or who has been consulted or assisted in answering the Discovery Requests (except those persons providing purely clerical and secretarial assistance). For each such person, specify the item of discovery that such person assisted in answering, or for which he or she provided any information.
- U. Defendant's written response will provide a date certain by which documents responsive to these production requests will be available for inspection and copying.
- V. Initial inspections by the United States of documents within the scope of these requests for production -- be they the originals, duplicates, or iterations of such documents -- shall take place wherever such documents normally reside or are maintained, unless the United States and Defendant agree to some other location(s).
- W. If any document requested is no longer in the possession, custody, or control of defendant, state:
  - 1. The disposition of the document;

- 2. When such document was prepared;
- The identity and address of the current custodian
   of the document;
- 4. The person who made the decision to transfer or dispose of the document; and,
- 5. The reasons for the transfer or disposition.
- X. These Discovery Requests are continuing in nature. To the extent the responses may be enlarged, diminished, or modified by information acquired by Defendant following service of its responses, Defendant should promptly serve supplemental answers reflecting such information, as required by Rule 26(e), Federal Rules of Civil Procedure.
- Y. If Defendant objects to a Discovery Request as vague or burdensome, it is directed to respond substantively to the best of its ability and in good faith, preserving any bona fide objections if necessary. Because the United States may not know in advance which questions are overly vague or burdensome to the Defendant, the United States requests that the Defendant attempt to obtain clarification or delimiting of the United States' Discovery Requests from the undersigned counsel, if circumstances otherwise prevent a full response to the question as written.
  - Z. Unless otherwise stated, the relevant time frame is 1972 to the present.

#### **DEFINITIONS**

For the purpose of these Discovery Requests, the following definitions apply.

A. Unless otherwise expressly provided herein, terms used in these Discovery Requests requests which are defined in the Clean Water Act ("CWA"), 33 U.S.C. § 1311 et seq., the Resource

Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., or in the regulations promulgated thereunder, shall have the meaning assigned to them in such statutes or regulations.

- B. "You" and "your" means Defendant Chemetco, Inc. ("Chemetco"), and all persons acting on behalf of Chemetco, Inc., including officers, directors, trustees, agents, attorneys and employees of Chemetco, and any predecessors (whether by merger, consolidation, acquisition or other transaction or legal process), parents, persons holding a controlling stock interest, subsidiaries, divisions or affiliates of Chemetco.
- C. "Defendant" unless otherwise stated herein, means Defendant Chemetco, Inc.

  ("Chemetco"), and includes, without limitation, its past and present officers, employees, agents, servants, representatives, counsel, consultants, contractors, subcontractors or other persons directly or indirectly employed by the Defendant or anyone else, past or present, acting on behalf of or otherwise subject to Defendant's control.
- D. "Document" means the complete original (or a complete copy where the original is not available) and each non-identical copy (where different from the original because of notes made on the copy or otherwise) of any writing or record, including but not limited to all typewritten, handwritten, printed or graphic matter of any kind or nature, however produced or reproduced, any form of collected data for use with electronic data processing equipment, and any mechanical or electronic visual or sound recordings, including, without limitation, all tapes and discs, now or formerly in your possession, custody or control, including all documents as defined in the broadest sense permitted by Rule 34 of the Federal Rules of Civil Procedure. The term "document" includes, but is not limited to, any logs of materials or containers shipped, other logs, invoices, purchase orders, checks,

receipts, bills of lading, weight receipts, toll receipts, loading tickets, receiving tickets, shipping orders, manifests, inventories, letters and other correspondence, offers, contracts, agreements, bids, proposals, policies, licenses, permits, applications, reports to government agencies, monthly reports, other reports, ledgers, accounts receivable, accounts payable, account statements, financial statements, minutes of meetings, sales estimates, sales reports, source and use analyses, memoranda, notes, calendar or diary entries, agendas, bulletins, graphs, charts, maps, photographs, drawings, surveys, data, sampling results, analytical results, descriptions of materials, load schedules, price lists, summaries, telegrams, teletypes, computer printouts, magnetic tapes, discs, microfilm and microfiche.

- E. "Person" means any natural person, sole proprietorship, private corporation, public corporation, municipal corporation, foreign or domestic corporation, non-profit corporation, partnership, joint venture, association, foreign, state or local governmental entity, political subdivision, public or private university or other institution of higher education, group, association, committee, trust, estate or any other organization.
- F. The terms "all," "each," and "every," and all conjunctions and disjunctions herein, shall be construed in the broadest possible sense, so as to bring within the scope of these questions any answers that would otherwise be omitted.
- G. "Facility" means Chemetco's secondary copper smelting plant at Hartford,

  Illinois, referred to in the United States' Complaint in this action, including any adjacent real property

  owned or leased by Chemetco, or otherwise used by Chemetco in support of its secondary copper

  smelting operations.
  - H. "Complaint" (or "Compl.") means the complaint filed by the United States in the above-

captioned case.

- I. "Answer" means the response of Chemetco, Inc. to the Complaint of The United States of America.
- J. "Plaintiff" and "United States" shall mean the government of the United States of America, its various branches, regulatory bodies, agencies, commissions, investigative arms or bodies, departments, divisions, and its Secretaries, agents, attorneys, administrators, employees, and any and all other persons acting for or on its behalf.
- K. "Relate to" or "relating to" means discuss, describe, refer to, reflect, contain, comprise, constitute, set forth, or concern in whole or in part.
  - L. "Or" means and/or.
- M. "U.S. EPA" means the United States Environmental Protection Agency, its various branches, regulatory bodies, sub-divisions, commissions, investigative arms or bodies, departments, Secretaries, agents, attorneys, administrators, employees, and any other person or persons acting on its behalf.
- N. "Corps" means the United States Army Corps of Engineers, its various branches, districts, regulatory bodies, sub-divisions, commissions, investigative arms or bodies, departments, Secretaries, agents, attorneys, administrators, employees, engineers and any other person or persons acting on its behalf.
- O. "Site" means the area on Chemetco's property which consists of approximately eight (8) acres, which is located in Section 16, Township 4 North, Range 9 West, City of Hartford, County of Madison, State of Illinois, and which is identified in Exhibit 2 to the Administrative Order dated

September 24, 1997 (the Administrative Order is Exhibit C to the United States' Complaint). (The "Site" is also referred to in Illinois' First Request for Admissions as the "Contractors' parking lot.")

P. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions.

#### **REQUESTS FOR ADMISSIONS**

- Admit that sometime after 1972 and prior to 1980, Defendant purchased the Site.

  Response:
- Admit that prior to 1980, the Site did not consist of chunk slag.
   Response:
- 3. Admit that prior to 1980, the Site did not consist of limestone gravel.

  Response:
- 4. Admit that prior to 1980, the Site did not consist of limestone gravel on the Site's surface.

Response:

5. Admit that prior to 1980, the Site did not consist of broken concrete.

Response:

6. Admit that in 1980, Defendant added chunk slag to a portion of the Site.

Response:

7. Admit that in 1980, Defendant added limestone gravel to a portion of the Site.

Response:

Admit that the chunk slag came from Defendant's Facility. 8. Response: 9. Admit that the chunk slag is or contains industrial waste. Response: Admit that the chunk slag is or contains solid waste. 10. Response: 11. Admit that the chunk slag is or contains garbage. Response: 12. Admit that the chunk slag is or contains chemical waste. Response: Admit that the chunk slag is or contains wrecked or discarded equipment. 13. Response: 14. Admit that the limestone gravel is or contains rock. Response: 15. Admit that in 1980, Defendant used front-end loaders at the Site. Response: Admit that in 1980, Defendant used front-end loaders to deposit chunk slag to a 16. portion of the Site. Response: Admit that in 1980, Defendant used front-end loaders to deposit limestone gravel to a 17.

portion of the Site.

#### Response:

18. Admit that in 1980, Defendant used front-end loaders to level out chunk slag on a portion of the Site.

#### Response:

19. Admit that in 1980, Defendant used front-end loaders to level out limestone gravel on a portion of the Site.

#### Response:

20. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag.

#### Response:

21. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a discernible way.

#### Response:

22. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a confined way.

#### Response:

23. Admit that the front-end loaders, when in use as stated in ¶¶ 16 & 18 above, conveyed chunk slag in a discrete way.

#### Response:

24. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel.

#### Response:

25. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a discernible way.

#### Response:

26. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a confined way.

#### Response:

27. Admit that the front-end loaders, when in use as stated in ¶¶ 17 & 19 above, conveyed limestone gravel in a discrete way.

#### Response:

28. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a discernible way.

#### Response:

29. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a confined way.

#### Response:

30. Admit that in 1980, Defendant added limestone gravel to a portion of the Site in a discrete way.

#### Response:

31. Admit that after 1980, Defendant added broken concrete to a portion of the Site.

32. Admit that after 1980, Defendant added limestone gravel to a portion of the Site.

Response:

33. Admit that Defendant added broken concrete to a portion of the Site on more than one occasion.

#### Response:

34. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1980 and the end of 1983.

#### Response:

35. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1984 and the end of 1988.

#### Response:

36. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1989 and the end of 1992.

#### Response:

37. Admit that in 1991 Defendant hired an individual, Rich Vest, to grade broken concrete on a portion of the Site with a bulldozer.

#### Response:

38. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete.

39. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete in a discernible way.

#### Response:

40. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete is a confined way.

#### Response:

41. Admit that the bulldozer, when in use as stated in ¶ 37 above, conveyed broken concrete in a discrete way.

#### Response:

42. Admit that Defendant added broken concrete to a portion of the Site on one or more occasions between the beginning of 1992 and October 9, 1997.

#### Response:

43. Admit that Defendant added limestone gravel to a portion of the Site on more than one occasion.

#### Response:

44. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1980 and the end of 1983.

#### Response:

45. Admit that Defendant added limestone gravel to a portion of the Site on one or more occasions between the beginning of 1984 and the end of 1988.

46.	Admit that Defendant added limestone gravel to a portion of the Site on one or more			
occasions between the beginning of 1989 and the end of 1992.				
	Response:			
47.	Admit that Defendant added limestone gravel to a portion of the Site on one or more			
occasions bet	ween the beginning of 1992 and October 9, 1997.			
	Response:			
48.	Admit that the broken concrete came from Defendant's Facility.			
	Response:			
49.	Admit that the broken concrete is or contains solid waste.			
	Response:			
50.	Admit that the broken concrete is or contains garbage.			
	Response:			
51.	Admit that the broken concrete is or contains wrecked or discarded equipment.			
	Response:			
52.	Admit that the broken concrete is or contains rock.			
·	Response:			
53.	Admit that the broken concrete is or contains sand.			
	Response:			
54.	Admit that the broken concrete is or contains industrial waste.			
	Response:			

55. Admit that Defendant used front-end loaders to add broken concrete to a portion of the Site.

#### Response:

56. Admit that Defendant used front-end loaders to deposit broken concrete to a portion of the Site.

#### Response:

57. Admit that Defendant used front-end loaders to level out broken concrete on a portion of the Site.

#### Response:

58. Admit that after the initial addition of limestone gravel in 1980, Defendant used frontend loaders to deposit limestone gravel to a portion of the Site.

#### Response:

59. Admit that after the initial addition of limestone gravel in 1980, Defendant used frontend loaders to level out limestone gravel on a portion of the Site.

#### Response:

60. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete.

#### Response:

61. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a discernible way.

62. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a confined way.

#### Response:

63. Admit that the front-end loaders, when in use as stated in ¶¶ 55-57 above, conveyed broken concrete in a discrete way.

#### Response:

64. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel.

#### Response:

65. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a discernible way.

#### Response:

66. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a confined way.

#### Response:

67. Admit that the front-end loaders, when in use as stated in ¶¶ 58-59 above, conveyed limestone gravel in a discrete way.

#### Response:

68. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a discernible way.

69. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a confined way.

#### Response:

70. Admit that on one or more occasions after 1980, Defendant added limestone gravel to a portion of the Site in a discrete way.

#### Response:

- 71. Admit that the Site's surface elevation is higher currently than it was before 1980.
  - Response:
- 72. Admit that the Site's surface currently is dry.

#### Response:

- 73. Admit that Defendant has previously used the Site for a motor vehicle parking lot.
  - Response:
- 74. Admit that Defendant currently uses the Site for a motor vehicle parking lot.

#### Response:

75. Admit that chunk slag currently exists on a portion of the Site.

#### Response:

76. Admit that broken concrete currently exists on a portion of the Site.

#### Response:

77. Admit that limestone gravel currently exists on a portion of the Site.

#### Response:

78. Admit that no chunk slag has been removed from the Site.

#### Response:

79. Admit that no broken concrete has been removed from the Site.

Response:

80. Admit that no limestone gravel has been removed from the Site.

Response:

81. Admit that the total amount of acreage impacted by Defendant's additions of material to the Site is approximately 8 acres.

Response:

82. Admit that the materials added to the Site cover a depth of approximately 93,000 cubic yards.

Response:

83. Admit that prior to 1980, the Site consisted, at least in part, of wetlands.

Response:

84. Admit that prior to 1980, the Site consisted of approximately 4.08 acres of wetlands.

Response:

85. Admit that prior to 1980, the Site consisted of 5 or more acres of wetlands.

Response:

86. Admit that prior to 1980, the Site consisted of 6 or more acres of wetlands.

Response:

87. Admit that prior to 1980, the Site consisted of 7 or more acres of wetlands.

		·
	88.	Admit that prior to 1980, the Site consisted of approximately 8 acres of wetlands.
		Response:
	89.	Admit that the Site borders Long Lake.
		Response:
	90.	Admit that the Site is contiguous to Long Lake.
		Response:
	91.	Admit that the Site neighbors Long Lake.
		Response:
	92.	Admit that the Site is proximate to Long Lake.
		Response:
	93.	Admit that the Site is close to Long Lake.
		Response:
	94.	Admit that the Site is within 500 feet of Long Lake.
		Response:
	95.	Admit that from 1972 to 1979, the Site consisted of a gently sloping landscape.
		Response:
	96.	Admit that from 1972 to 1979, the Site's surface elevation was higher than the surface
elevati	on of th	at portion of Long Lake that borders the Facility.
		Response:
	97.	Admit that water flows downhill.
		Response:

Admit that from 1972 to 1979, some amount of surface water drained off the Site into 98. Long Lake. Response: Admit that Long Lake is a body of water.. 99. Response: Admit that Long Lake is a tributary of the Mississippi River. 100. Response: 101. Admit that Long Lake flows into the Mississippi River. Response: 102. Admit that Long Lake is hydrologically connected to the Mississippi River. Response: 103. Admit that Long Lake has a surface water connection to the Mississippi River. Response: 104. Admit that the Mississippi River is a body of water. Response: 105. Admit that the Mississippi River is navigable-in-fact. Response: Admit that the Mississippi River has historically been used to transport interstate 106. commerce. Response:

107.

Admit that the Mississippi River is currently used to transport interstate commerce.

#### Response:

108. Admit that the Site is within 2 miles of the Mississippi River.

#### Response:

109. Admit that Defendant did not have any type of federal, state, county, or municipal permit for any activity on the Site.

#### Response:

110. Admit that Defendant did not have a permit from the Corps under section 404 of the Clean Water Act for any activity on the Site.

#### Response:

111. Admit that Defendant did not apply for any type of federal, state, county, or municipal permit for any activity on the Site.

#### Response:

112. Admit that Defendant did not apply to the Corps for a permit under section 404 of the Clean Water Act for any activity on the Site.

#### Response:

113. Admit that Defendant received the September 24, 1997 Administrative Order and its Exhibits 1-3 (Compl., Ex. C) ("AO").

#### Response:

114. Admit that Defendant did not submit to U.S. EPA within 30 days of Defendant's receipt of the AO a written plan to restore the wetlands on the Site to their original condition and contours.

#### Response:

115. Admit that Defendant did not submit to U.S. EPA within 30 days of Defendant's receipt of the AO a written plan to restore the wetlands on the Site to their original condition and contours consistent with the general guidelines reflected in Exhibit 3 to the AO.

#### Response:

116. Admit that Defendant has not, to date, obtained U.S. EPA's approval of a wetlands restoration plan for the Site.

#### Response:

117. Admit that Defendant has not, to date, implemented any wetlands restoration plan for the Site.

#### Response:

118. Admit that Defendant has not, to date, performed any work at the Site designed to restore the Site to the condition it was in prior to 1980.

#### Response:

#### <u>INTERROGATORIES</u>

1. For each and every Request for Admission that you deny or partially deny, identify and state with particularity the factual basis for your denial or for that part of the Request for Admission that you deny.

#### Answer:

2. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 197) that Plaintiff's claims are barred by the statute of limitations.

#### Answer:

3. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 198) that Plaintiff's claims are barred by the doctrines of estoppel, acquiescence, laches, waiver, or unclean hands.

#### Answer:

4. Identify and state with particularity the factual basis for Defendant's statement in its Answer (¶ 199) that the Clean Water Act is not applicable to the areas on or around Defendant's property.

#### Answer:

5. Identify the date you became owner of the Site, describe with particularity the visual condition of the Site when you became owner, and identify any person with knowledge about the condition of the Site prior to 1980.

#### Answer:

6. Identify and state with particularity the activity or activities performed on the Site, and who performed that activity or those activities, prior to Defendant's ownership of the Site.

#### Answer:

7. Identify and state with particularity the activity or activities performed on the Site, and who performed that activity or those activities, between the time Defendant became owner of the Site and the time it added materials to the Site in 1980.

#### Answer:

8. Identify all persons who participated in, including but not limited to any person who made recommendations in aide of, Defendant's decision to add materials to the Site.

#### Answer:

9. Identify and explain with particularity Defendant's purpose in adding materials to the Site; why Defendant chose the Site instead of another location; the cost of the activity; and the reasons why Defendant chose certain materials over others.

#### Answer:

10. Identify and state with particularity each and every type of material that was added to the Site; the dates on which each and every type of material was added to the Site; how much of each and every type of material was added to the Site (in cubic yards), both on the amount on each date and the total amount of material existing today; how much acreage of the Site was impacted by the material on each and every year since the first addition of material in 1980; and from where each and every type of material was obtained or originated.

#### Answer:

Describe how each and every type of material that was added to the Site, including but not limited to identifying all persons who performed the additions and describing the equipment they used.

#### Answer:

12. Identify and explain with particularity whether any of the materials added to the Site were hazardous and provide any waste characterization information or data.

#### Answer:

13. State whether your January 30, 1998 Response to U.S. EPA's Request for Information was truthful and complete, and supplement your responses so that each and every individual response is true and complete as of the date of your response to this discovery request.

#### Answer:

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

1. For each and every Request for Admission that you deny or partially deny, identify and produce any and all documents that relate to your denial or that part of the Request for Admission that you deny, including but not limited to each and every document that either supports or tends to refute your denial or partial denial.

#### Response:

2. Identify and produce any and all documents relating to your answers to the interrogatories in this discovery request.

#### Response:

3. Identify and produce any and all documents, including but not limited to maps, photographs, topographic surveys, wetland delineations, soil borings, vegetation surveys, hydrological or flood surveys, studies, reports, aerial photographs, and internal memoranda, describing or depicting the condition of the Site, past and present.

#### Response:

4. Identify and produce any and all documents to supplement the set of documents that you identified and produced in your January 30, 1998 Response to Request for Information so that the

set of documents produced by you is complete as of the date of your response to this discovery request.

Response:

Respectfully submitted,

JOHN C. CRUDEN
Acting Assistant Attorney General

Dated:

9/17/01

ANDREW J. DOYLE

U.S. Department of Justice

Environmental Defense Section

P.O. Box 23986

Washington, D.C. 20026-3986

(202) 514-4427/8865 (FAX)

GREGORY L. SUKYS

**Environmental Enforcement Section** 

U.S. Department of Justice

P.O. Box 7611

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Southern District of Illinois

GERALD M. BURKE

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Southern District of Illinois

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#### OF COUNSEL:

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JEFFERY M. TREVINO Associate Regional Counsel U.S. EPA, Region 5 77 West Jackson Blvd. Chicago, IL 60604 (312) 886-6729

CASSANDRA RICE U.S. EPA Office of Enforcement and Compliance Assurance 401 M. Street, S.W. Washington, D.C. 20460

MARY ANDREWS U.S. EPA Office of Enforcement and Compliance Assurance 401 M Street, S.W. Washington, D.C. 20460

#### **CERTIFICATE OF SERVICE**

The undersigned counsel for Plaintiff, the United States of America, hereby certifies that on Sept. 7 2001, he caused the foregoing UNITED STATES' FIRST REQUESTS FOR ADMISSIONS AND SECOND SET OF

INTERROGATORIES AND REQUESTS FOR THE PRODUCTION OF DOCUMENTS to be served on this date by Federal Express, priority overnight, as well as by facsimile, on the following individuals:

George M. von Stamwitz, Esq. John Cowling, Esq. Armstrong Teasdale One Metropolitan Square, Suite 2600 St. Louis, Missouri 63102-2740 314-621-5070 314-621-5065 (facsimile)

Patrick M. Flynn, Esq. Flynn & Guymon 23 Public Square, Suite 440 Belleville, Illinois 62220 618-233-0480 618-233-0601 (facsimile)

APTORNEY FOR THE UNITED STATES

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Andrew Duyle Chris Black Tom Martin

Chis Person Jim Morgan GREG SUKYS Roy Ball George un Sternantz MIKE FLYNN

KEUIN LESKO

Chris Cahnovsky Nick Mahlandt Gina Search

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USEPA

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186 US DOJ

ENVIRON (Chemites)

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IEPA/RCAL PRINTS

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Jemorgan @agstute. Ilus 202 514 2068 GREG, SURYSQUSDOS.GOV

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618-233-0480

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IEPA-Water, Collinsvilly

IEPA/Collinsville

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epg 1300 @\_\_\_\_\_

618/346-5120 epa 43470epa. statzil. us

#### August 15, 2000

George von Stamwitz Armstrong, Teasdale, Schlafly & Davis One Metropolitan Square, Suite 2600 St. Louis, MO 63102-2740

Re: United States and Illinois v. Chemetco, soon to be filed.

Dear George:

Enclosed please find the final draft of the proposed Partial Consent decree to address the refractory brick and zinc oxide areas. We would like to schedule a face to face/phone conference for July 20 or 21 to finalize the document for presentation to the Court.

As promised, we have given a great deal of thought to your request to reduce the proposed amount for financial assurance for the work. Because of the factors set forth below, we cannot do so.

First, as we discussed before, we cannot presume that the State or USEPA could perform the same work at the same costs that Chemetco projects. Second, your costs are based upon treatment and disposal of the contamination as special waste, an option we are still not guaranteed will be available to Chemetco or one that the governments would opt for even if available.

Third, your projections do not address any work required after the contamination is removed such as confirmatory sampling, development of closure plans, groundwater sampling and monitoring. Your projections also do not address the contamination outside of Containment Area 1.

With these significant unknowns, the governments must opt for a more conservative approach. Thus, our continued insistence on the \$650,000.00 amount.

If you have any questions, please call me at 217-524-7506.

Very truly yours,

James L. Morgan Senior Assistant Attorney General

JM:jm

George M. von Stamwitz (314) 342-8017 gvonstam@armstrongteasdale.com

August 14, 2000

#### **VIA FAX**

Mr. James Morgan Assistant Attorney General Environmental Control Division 500 South Second St. Springfield, IL 62706

Greg Sukys, Esq.
United States Department of Justice
Environmental Enforcement Section
1425 New York Ave., 13th Floor
Washington, DC 20005

Mr. Tom Martin
United States Environmental
Protection Agency
Region V
77 W. Jackson St.
Chicago, IL 60604

RE: Partial Consent Order - Chemetco, Inc.

#### Gentlemen:

Chemetco has performed a detailed review of the draft Partial Consent Order and it has two threshold comments.

The draft Order contemplates litigation being filed for all the issues prior to entry of the Partial Consent Decree. We believe initiating litigation will be counter-productive to what we anticipate to be successful negotiations on the remaining technical issues. We recommend and propose that to the extent the agencies need a Consent Order at this stage in the proceedings that the complaints be specifically targeted to the two areas in question and that the Consent Order resolve the issues alleged in the complaints.



M. GERVICH & SONS \_

SCRAP IRON - METAL . \_\_ STRUCTURAL STEEL \_\_

AREA CODE 515
PHONE 753-3359
901 EAST NEVADA STREET
P.O. BOX 67
MARSHALLTOWN, IOWA 50158

FAX <del>(515)</del> 753-3340 641

July 28, 2000

Regional Freedom of Information Officer U.S. EPA, Region 5 77 West Jackson Boulevard (MRI-9) Chicago, IL 60604-3507

**RE: Information Request** 

Dear Sirs,

As you may know, on November 29, 1999, President Clinton signed into law the Superfund Recycling Equity Act (Public Law 106-113). This law clarifies Superfund to state that recycling is not disposal, and shipping for recycling is not arranging for disposal.

Under the new law, a recycler must exercise 'reasonable care' to determine that the consuming facility where the material is sent for recycling is in compliance with substantive environmental requirements that are applicable to the recyclable material. This includes making inquiries to the appropriate federal, state, or local environmental agency regarding the compliance status of the consuming facility.

To comply with this requirement, I am requesting information on the compliance status of the following company as it relates to the handling storage and management of scrap materials at the company's facility:

Sent on 8140

Chemetco, Inc. 3754 Chemetco Lane Hartford, IL 62048

Specifically, I am interested in finding out if the facility named above is currently meeting its compliance goals set forth in any consent order or administrative action which resulted from an enforcement action due to a Clean Air Act violation(s).

Thank you in advance for your assistance. As this information is critical in demonstrating 'reasonable care', please provide the necessary statement or documentation by  $\underline{20}$  calendar days after receipt of this letter to the address denoted in the letterhead.

incereiy,

Kurt M. Jackson

**Environmental Compliance Officer** 

M. Gervich & Sons, Inc.

Waste, Pecility as 14" (PANE)

<sup>2</sup> This could include the handling, processing, reclamation, storage, or other management activity directly associated

with the recyclable material.

12

A 'consuming facility' is the facility where the recyclable material was handled, processed, reclaimed protherwise managed. For example, a steel mill, paper mill, foundry, or even another scrap recycler can be possidered a 'consuming facility'.

Nane

Organization

Phone

Arever Doyce
MICHAEL WILKENING
Nick Mahlandt
Ward Lenz
George von Stammitz
Leather Young
Kim & Fock
Chris Black
Bill Long
GREG SUKYS
Jeffer M. Tramo

ENRD-DD) CHEMETED 202-514-4417 (618) 254-4381

JEPA- Collinsville 618.346-5120

Corps of Engineers Armsbry Rossall Chemeters 314-331-8186 314-331-8070 618-254-4381 - n-

U.S. EPA Warter US DOJ U.S. EPA (ORC) (312) 886-1451 (312) 886-9.780 202 514 2068 (312) 786-6929

PHOUSE / FAX ORG E-MAIL ME 202514 2068/616-6584 GREG. SURYS@USDOJ. GOV GREG SUKYS US DO 5 andrew-dogle trevino. Jeffry @ Epo. US DOJ 202-514-4427/574-ANDY Dayle US EPA 312 886 6/129//312 30% 217 782-55-44 /782-9807 epa 8814@ opa stati.il. Chis Perzan IN EPA Memeter (d8/254-4381 ext. 268/254-0138 neumayoungeter-org. the Amstroy Tacabole (34)621-5070 Guenstem a armston Con-Heather Youn Georg van Stamui MINE WILKENING 11 - 11 Ext 372 Kim L. Fock Chyl. Black VISIEPA (312) 886-1451 Christopher, black Patrick Knetler 312 353-6268 mether Rtrick @ epa, gov Tom Martin USEPA-ORC 312-886-4273 /(+) 886-0747 Martin thomas@epa.gov Cannovsky IEPA/Collinsville FOS 618/346-5120(1)5155 EPA 43436 Cpa. state. il. US Bill Tong U.S.EPA-Water (312) 886-9350/612/886-0168 Tong, William a epagov 217 524-7506 /524-7740 morgan@atg state.11.49 Jim Morgan IL AG EPA DO/OECA 2301 MARY DUBREROS 2025464011/0022 DNOREUS HONDE EPA gov

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)
Plaintiff,	
Vs.	) Criminal No. 99-30048-001-WDS
CHEMETCO, INC., a corporation,	{
Defendant.	<u> </u>

#### DECLARATION OF CFRISTOPHER N. CAHNOVSKY

- I, Christopher N. Cahnovsky, declare the following:
- 1. My name is Christopher N. Cahnovsky, and I am employed by the Illinois Environmental Protection Agency as an Environmental Protection Specialist of the Field Operations Section in the Bureau of Land. I have been with the Agency for ten (10) years. I received a Bachelors of Science Degree in Animal Sciences from Southern Illinois University in Carbondale. In 1993, I received a Masters of Science in Environmental Science from Southern Illinois University in Edwardsville. In 1995, I received a professional certification from the Institute of Hazardous Materials Management and currently hold a certification as a Certified Hazardous Materials Manager. I am currently on the Board of Directors of the Gateway Society of Hazardous Materials Managers based in St. Louis, Missouri.

Summary of Final Sampling and Analysis Report
Long Lake - Mitchell, Illinois - June 1999 (Govt.'s Hearing Exhibit 45)

2. On March 15 and 16, 1999, the Illinois Environmental Protection Agency ("IEPA" or "the Agency") sampled the surface water, sediment and slag in Long Lake in response to the discovery of an unpermitted discharge pipe from the Chemetco facility in Hartford, Illinois.

The area sampled included a portion of Long Lake from near Chemeteo's property line to Franko Lane in unincorporated Madison County. Also, a small area of Long Lake on the north side of Illinois Route 3 was sampled. The Agency also, sampled a field road through the lake that is made of secondary copper smelting slag from Chemeteo.

- 3. The study area south of the release area is about a 10,000 foot (1.89 miles) section of the lake. The area of the lake from Chemetco's property line to the first home is about 3,600 feet long. The next approximately 800 feet of Long Lake is open water with an unconsolidated bottom. The next approximately 2,000 feet is predominantly dry or with less than two feet of water but susceptible to seasonal flooding. The remaining approximately 3,600 feet of Long Lake to Franko Lane is open water with an unconsolidated bottom.
- 4. A total of eight (8) surface water samples were collected from Long Lake. These samples were analyzed for pH, fluoride, sulfate, total dissolved solids, chloride, turbidity, mercury, magnesium, potassium, antimony, barium, beryllium, chromium, cobalt, lead, nickel, silver, thallium, zinc, calcium, sodium, aluminum, arsenic, boron, cadmium, copper, iron, manganese, selenium, strontium and vanadium.
- 5. A total of eight (8) sediment samples were taken during this sampling event. The sediment samples were taken at the same locations as the surface water samples. The sample depth of the sediment samples was 0 10 inches. The sediment samples were analyzed for pH, total organic carbon, phenols, mercury, magnesium, arsenic, antimony, barium, beryllium, chromium, cobalt, lead, nickel, silver, thallium, zinc, calcium, sodium, aluminum, boron, cadmium, copper, iron, manganese, selenium, strontium, vanadium and potassium.

- 6. A sample of the slag road was obtained during this sampling event. The slag sample was analyzed for mercury, magnesium, arsenic, antimony, barium, beryllium, chromium, cobalt, lead, nickel, silver, thallium, zinc, calcium, sodium, aluminum, boron, cadmium, copper, iron, manganese, selenium, strontium, vanadium and potassium.
- 7. The results of the surface water samples were compared to the Bureau of Water's General Use Water Quality Standards contained in subsection 302,208(g).
- 8. The Total Dissolved Solids ("TSD") limit of 1,000 milligrams per liter ("mg/l") was exceeded in samples S502, S503, S504, S505 and S506. The highest TSD results was in sample S502 at 1,330 mg/l. (Attachment 1 Diagrams indicating Containment Areas).
- 9. The horon limit of 1.0 mg/l was exceeded in samples \$502, \$503, \$504, \$505 and \$506. The highest boron result was in sample in \$502 at 1.70 mg/l.
- 10. The fluoride limit of 1.4 mg/l was exceeded in samples SS01, SS02, SS03, SS04, SS05, SS06 and SS07. The highest fluoride result was in sample SS02 at 20 mg/l.
- 11. The iron limit of 1.0 mg/l was exceeded in samples S501, S503, S504, S505, S506 and S507. The highest iron result was in sample S506 at 3.8 mg/l.
- 12. The acdiment data for lead suggests that this metal may be slightly elevated in comparison to State-wide sediment data complied by the Illinois Environmental Protection Agency Bureau of Water's Sediment Classification for Illinois Inland Lakes study, updated in 1996. (Mitzelfelt, Jeffrey D., Sediment Classification for Illinois Inland Lakes, Illinois Environmental Protection Agency Bureau of Water Division of Water Pollution Control Planning Section Lake and Water Shed Unit, September 1996 Govt.'s Hearing Exhibit 48). This study found that the normal range of lead in lake sediments is 14-58 mg/kg. Three of the seven samples collected

down-gradient of the Chemetou discharge exceeded this range. The highest was sample X102 at 77 mg/kg. The up-gradient sample, Sample X108 also exceeded at 62 mg/kg.

- 13. The normal cadmium levels in Illinois lakes is less than 5.0 mg/kg. Down-gradient from the Chemetco discharge cadmium levels are elevated and highly elevated. The elevated range is between 5 and 13 mg/kg. Elevated samples were X101, X102 and X107 at 11 mg/kg, 7.6 mg/kg and 12 mg/kg, respectively. The highly elevated range for cadmium is 14 mg/kg or greater. Highly elevated samples were X103, X105 and X106 at 18 mg/kg, 58 mg/kg and 19 mg/kg, respectively.
- 14. The normal range for zinc is 59 to 144 mg/kg. The elevated range for zinc is 145 to 1099 mg/kg. All sediment samples fell in the elevated range for zinc. The highest sample result was X105 at 300 mg/kg.
- 15. The slag results showed a TCLP level of 14 mg/l. The regulatory limit for lead is 5.0 mg/l. In a July 15, 1988 letter from Lawrence Eastep of the Illinois Environmental Protection Agency's Permit Section to Dave Hoff, President of Chemetco, the Agency recommended that if the slag is used as a roadbed material, steps should be taken to keep the potential leaching of lead and cadmium to an absolute minimum. Care should be taken to minimize infiltration and prohibit any potential leachate from impacting the environment. The Agency limited the use of the slag to sites which will always be above the groundwater table and which are removed from permanent surface water bodies. On June 15, 1999, measurements of the slag were taken. The road measures 121 x 22 x 2.5 ft for a total of 6655 cubic feet. This equals about 247 cubic yards of slag, rock and soil.

#### Final Field Sampling and Analysis Report - Organic Sampling Long Lake - Mitchell, Illinois - October 1999 (Govt.'s Hearing Exhibit 46)

- Canal, sediment from Long Lake and obtained a background soil sample at the Chemeteo facility for the presence of dioxins and furans. On July 16, 1999, the Illinois Department of Natural Resources ("IDNR"), Division of Fisheries obtained fish samples from Long Lake. The IDNR was contacted by the Illinois Environmental Protection Agency to obtain fish samples for dioxins and furans analysis.
- 17. A total of three sediment samples were taken during this sampling event. One sample was taken about 20 feet west of Containment Area #3 and one sample was taken about six (6) feet east of Containment Area #3. (Attachment 1 Diagrams indicating Containment Areas). Containment Area #3 is the part of Long Lake impounded by Chemetoo to contain the gross zinc oxide contamination to the lake. The third sediment sample was taken about 15 feet north of Franko Lane. The sample depths of the sediment samples were 0-10 inches. One background soil sample was taken in the front yard of Chemetoo's "farmhouse." One sample of zinc oxide sludge was taken from the bottom of the east side of the East Cooling Water Canal.
- 18. The IDNR used a shock boat to obtain the fish for sampling. The fish samples were obtained north of Franco Lane and south of the "slag road." In this section big buffalo, big carp and small buffalo were obtained. A filet sample of the big buffalo and the big carp were analyzed for dioxins and furans.

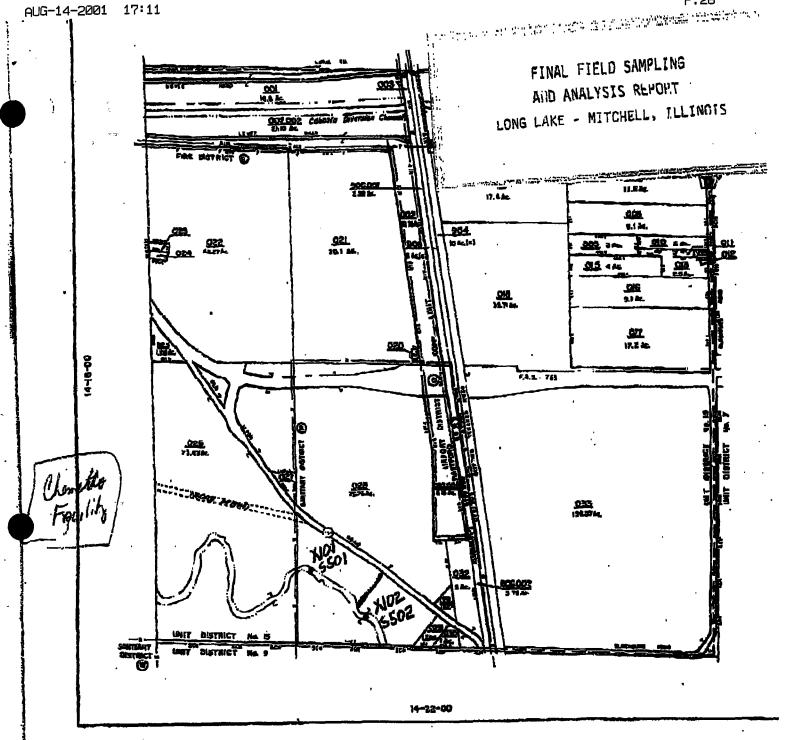
19. The sample results were forwarded to the Office of Chemical Safety's Toxicological Assessment Unit for interpretation. Sample X109, from the east side of containment Area #3 showed Dioxin Equivalent levels of 123 nanograms per kilogram ("ng/kg"). Sample X202 of the zinc oxide sludge from the East Cooling Canal showed a Dioxin Equivalent levels of 232 ng/kg.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6, 2000.

CHRISTOPHER N. CAHNOVS

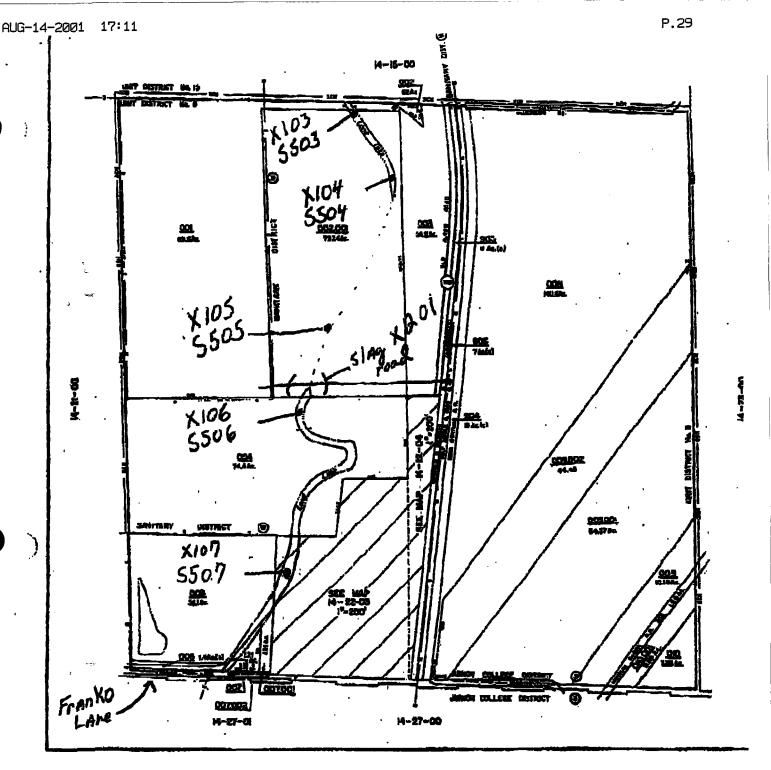
M.S., CHMM

Environmental Protection Specialist
Illinois Environmental Protection Agency



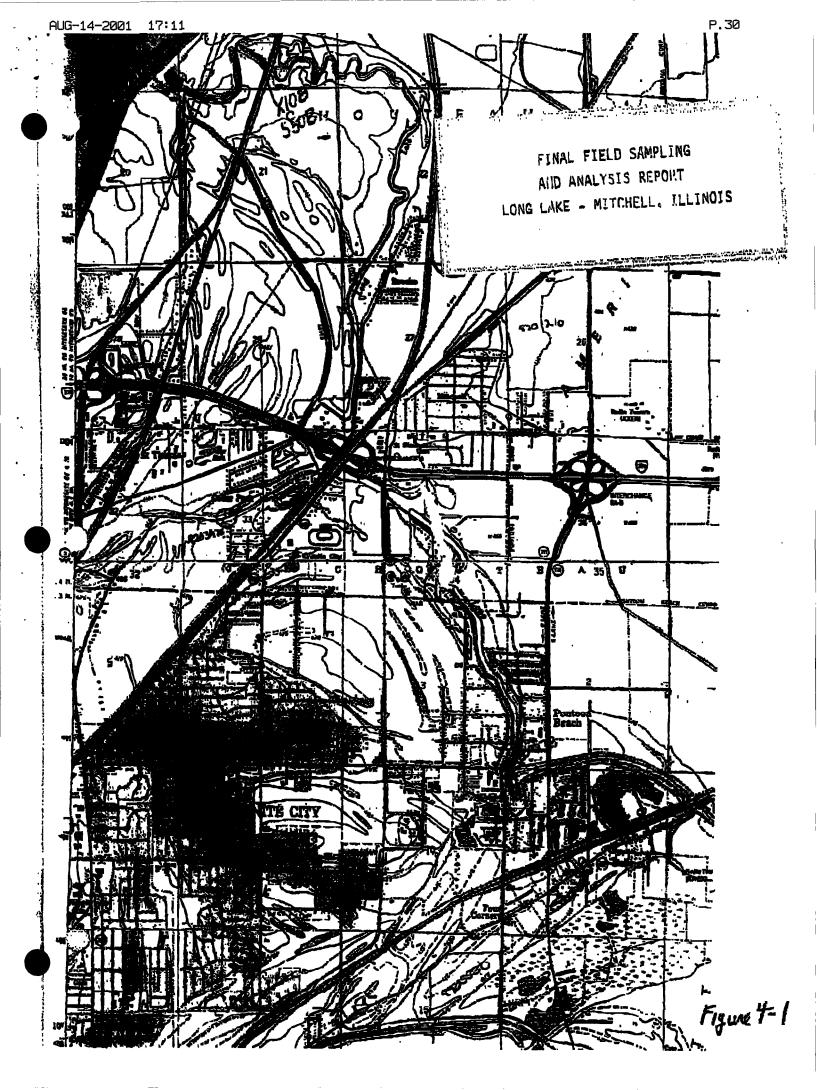
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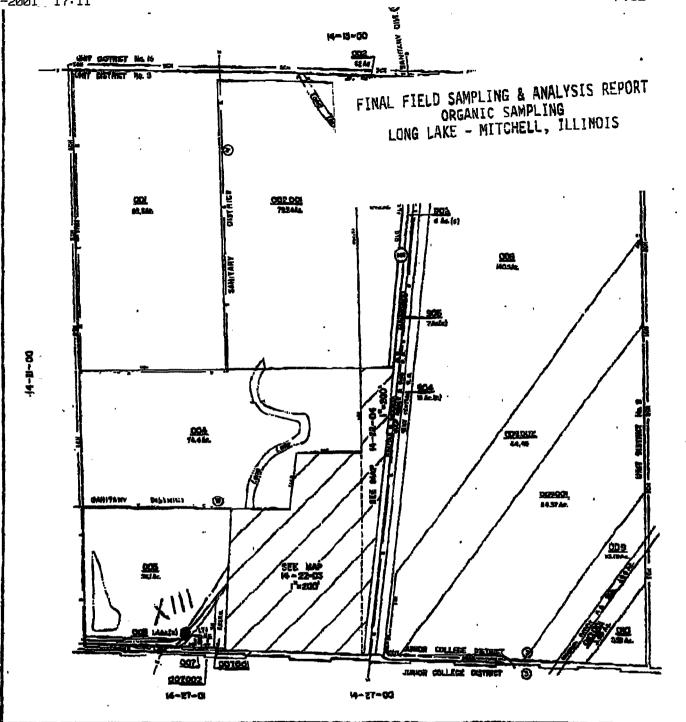
#### CHOUTEAU TOWNSHIP

# FINAL FIELD SAMPLING AND ANALYSIS REPORT LONG LAKE - MITCHELL, ILLINOIS SECTION 22 TOWN C4 NORTH, RANSE 09 WEST MADEST TOWN C4 NORTH, RANSE 09 WEST



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POINTS OF COMPLIANCE

MONITORING WELL

## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DIVISION OF LEGAL COUNSEL 1021 NORTH GRAND AVENUE E., P.O. BOX 19276 SPRINGFIELD, ILLINOIS 62794-9276

TELEPHONE (217)782-5544+FACSIMILE (217)782-9807

DATE: 4/14/0/

#### FACSIMILE TRANSMITTAL SHEET

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IMPORTANT - THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THE MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT READING, DISSEMINATING, DISTRIBUTING, OR COPYING THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IL 532 2624 ADM 214 Feb-99

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

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United States of America.	LERK, U. S. DISTER
Plaintiff,	HERN DISTRICT
vs.	Criminal No. 99-30048-001-WDS
CHEMETCO, INC., a corporation.	, } }
Defendant.	Ś

#### STIPULATION OF FACTS

#### \* Background

- 1. Chemetco, Inc., is a corporation which operates a foundry to smelt secondary copper-bearing material ("scrap") to recover copper, lead tin solder, and other byproducts at its plant site located near Hartford in Madison County within the Southern District of Illinois.
- 2. Chemetco, Inc., formerly known as Chemico Metals Corporation, is a corporation incorporated under the laws of the State of Delaware and doing business in the State of Illinois.
- 3. In and around 1969, Chemetoo acquired a site near Hartford in Madison, lilinois, on the east side of lilinois Route 3, south of Cahokia Diversion Drainage Canal and north of Long Lake. On this site, in and after 1970, Chemetoo built and operated a foundry equipped with three (and later four) rotary furnaces designed for smelting copper-bearing scrap and other secondary materials from which Chemetoo cast copper anodes, a valuable intermediate product suitable for further refining by electrolysis. In addition to casting copper anodes, Chemetoo also recovered from the same furnaces, lead-tin solder, also a valuable intermediate product suitable

for further refining. Scrap materials, including fines, are stored on paved surfaces at Chemetco until being charged into the furnaces.

- 4. Chemetoo's smelting processes also generated two byproducts which were stored at various locations on the plant site: slag and zinc oxide.
- 5. Slag is the term used by Chemetco to describe the silicate residue that is poured off of the molten metal in the smelting process. Chemetco's silicate slag contains a number of metals, including copper, iron, lead, tin and cadmium.
- 6. Zinc oxide is the term used by Chemetco to describe particulates collected from the escaping furnace gases by Chemetco's systems for controlling air pollution. Chemetco's "zinc oxide" consists of a number of metals, among which zinc oxide has the largest concentration. Chemetco's Material Safety Data Sheet for zinc oxide identifies the primary constituents of zinc oxide as follows: zinc, lead, copper, silica, chloride, iron, calcium, sodium, cadmium, nickel and silver.

#### \* The Clean Water Act and Permits

7. In or around 1972, the United States enacted the Federal Water Pollution Control Act, commonly known as the Clean Water Act, Title 33, United States Code, Sections 1251 through 1387, which regulates the discharge of pollutants into the waters of the United States. Its purpose is to restore and maintain the chemical, physical and biological integrity of those waters. The Clean Water Act, Title 33, United States Code, Section 1342, authorizes the United States Environmental Protection Agency ("U.S. EPA") to prescribe conditions for the permissible discharge of pollutants.

- The U.S. EPA prescribes conditions for permissible discharges by means of the National Pollution Discharge Elimination System ("NPDES"). Under this system, the discharge of any pollutant into the waters of the United States without an NPDES permit or in violation of the conditions of an NPDES permit is unlawful, pursuant to Title 33, United States Code, Sections 1311(a) and 1342.
- 9. Outfall 001. From on or about May 29, 1975 through October 1984 pursuant to and subject to the conditions of NPDES Permit IL 0025747 for Outfall 001, Chemeteo discharged each month millions of gallons of excess water, including a mixture of storm water, non-contact cooling water, and process waste water through a pipe into the Cahokia Diversion Drainage Channel, a tributary to the Mississippi River.
- In or around March 8, 1984, U.S. EPA adopted regulations for the secondary copper refining industry that required no discharge of process wastewater pollutants no later than July 1, 1984. 40 C.F.R. §§ 421.60, 421.61, and 421.63; 49 Fed. Reg. 8742, at 8742, 8802-03 (March 8, 1984).
- Having ceased to use the discharge pipe to the Cahokia Diversion Drainage Channel in October 1984, Chemetco did not apply to renew its NPDES permit for Outfall 001.
- 12. The U.S. EPA delegated to the Illinois Environmental Protection Agency ("IEPA") the responsibility to implement the NPDES permit program within the State of Illinois. Under this delegation, the IEPA issues NPDES permits, which contain the standards and conditions under which pollutants may be discharged. The United States retains the authority to enforce permit standards in federal court. 33 U.S.C. §§ 1319(e), 1342(b).

- Outfall 002. On or about June 27, 1985, Chemeteo obtained from IEPA an NPDES Permit IL 0025747 for Outfall 002, Storm water runoff into Long Lake. Among other conditions and limitations Chemeteo's permit required that:
  - a. Samples taken in compliance with the effluent moultoring requirements shall be taken at a point representative of the discharge, but prior to entry into the receiving stream.
  - b. For the purpose of this permit, this discharge is limited to storm water, free from process and other wastewater discharges. The discharge of process wastewater from this facility is prohibited.

This NPDES permit for Chemetco's Outfall 002 was renewed by Illinois Environmental Protection Agency on May 14, 1990 and May 20, 1996.

- In June of 1986, Chemeteo submitted to the Illinois Environmental Protection Agency ("Illinois EPA") for approval its storm water runoff control system plan in which Chemeteo described its proposed system as a "closed loop" system, from which no discharge of collected storm water would occur.
- On September 12, 1986, the Illinois EPA issued to Chemetco a Water Pollution Control Permit No. 1986-EB-0934, which permitted Chemetco to construct and/or operate:

  "A storm water runoff control system consisting of five (5) concrete-lined storage basins, one (1) concrete-lined bunker, and all necessary piping, controls, pumps, and appurtenances to collect the volume of a 25-year, 24-hour storm event." The permit was issued subject to a special condition which stated: "Special Condition: This permit is issued with the expressed understanding that there shall be no surface discharge from these facilities. If such discharge occurs, additional or

alternate facilities shall be provided. The construction of such additional or alternate facilities may not be started until a permit for the construction is issued by the Agency."

#### \* Installation

- In or about September 1986, on a Saturday, Chemetco, using contract laborers from Industrial Fabrication and Repair, Inc., known as "IFAB," installed a storm water rupoff control system for the impermeable portions of its plant facility. Because Chemetco's storm water runoff contained pollutants associated with its industrial activity, federal and state law required that Chemetco control its storm water runoff and obtain a permit prior to discharging the storm water from the plant facility.
- 17. As part of the pipe installation, IPAB pursuant to Chemetco's instructions, laid a pipe south of Oldenberg Road down inside the unnamed ditch tributary to Long Lake located on property owned by Chemetco, and covered exposed pipe with straw.
- 18. The secret pipe does not appear in any blueprint or drawing kept by Chemetco.

  \* Pipe's Use
- 19. From the time of its installation in or about September 1986, until and on September 18, 1996, the secret pipe was used to discharge excess water, which was contaminated with the toxic metals lead and cadmium and with other pollutants, from the Chemetco plant site and into the unnamed ditch tributary to Long Lake located on property owned by Chemetco.
- 20. From in about September 1986 through September 18, 1996, Chemetco did not have a permit under the Clean Water Act to discharge pollutants from the secret pipe into the lumamed ditch tributary to Long Lake located on property owned by Chemetco.

#### \* Discovery

On September 18, 1996, Illinois EPA inspector, Chris Cahnovsky, and an United States Environmental Protection Agency inspector discovered the secret pipe and observed polluted water flowing from it into the ditch draining to Long Lake.

#### \* Point of Discharge

- 22. Long Lake is a tributary to the Mississippi River, a waterway of the United States.
- 23. The discharge also went onto wetlands surrounding the discharge pipe and the unnamed ditch tributary located on property owned by Chemetco.
- 24. Visible evidence of contamination extended five feet down into the bed of Long
  Lake located on property owned by Chemetco. Sampling from the areas of contamination
  confirmed the presence of lead and cadmium.

#### \* Employees Involved

- 25. Ira Sidney Campbell. In 1986, Ira Sidney Campbell was employed by Chemetco as the superintendent of maintenance. Campbell managed the maintenance responsibilities for the Chemetco facility and directly supervised a laborer foreman, Larry Ort; an electrical foreman, George Boud; and a millwright foreman, Gary Reed.
- 26. Campbell also owned and operated a business incorporated as Industrial Fabrication and Repair, Inc., known as "IFAB," which provided machinery repair services and contract labor to Chemetco.

- As discussed above, in the summer of 1986, Chemetco, using contract laborers from IFAB, installed a storm water runoff control system for the impermeable portions of its plant facility. Because Chemetco's storm water runoff contained pollutants associated with its industrial activity, federal and state law required that Chemetco control its storm water runoff and obtain a permit prior to discharging the storm water from the plant facility.
- 28. In or about September 1986, Denis Feron, President and a reported owner of Chemetco, instructed Campbell to install a discharge pipe ("secret pipe") connected to the ten-inch storm water runoff collection pipe located along the south fence line of the plant. Feron also instructed Campbell to use IFAB employees to install the secret pipe on a Saturday and to have a minimum number of people involved.
- 29. Campbell agreed and directed his IFAB shop foreman to bring two other shop employees to Chemetco where on a Saturday they laid and joined sections of pipe starting with a connection to the Chemetco ten-inch storm water pipe and continuing under Oldenberg Road down an unnamed ditch tributary which drained into Long Lake located on property owned by Chemetco. The workers then covered the exposed pipe section with straw.
- 30. At Denis Feron's direction, Campbell instructed the Chemetco laborer foreman, Larry Ort, to use the secret pipe to remove water from the plant in an emergency. Campbell also advised his other foremen, including Gary Reed and George Boud, that the secret pipe had been installed.
- 31. Gary L. Reed. Gary L. Reed was Chemetco's Superintendent of Maintenance from 1988 through June 1993; Mr. Reed replaced Sid Campbell in that position. Prior to

becoming Superintendent of Maintenance, Reed was employed by Chemetco as Millwright
Foreman under Superintendent of Maintenance Sid Campbell.

- 32. As the Superintendent of Maintenance, Reed managed the maintenance responsibilities for the Chemetco facility and supervised the laborers through a Laborer Foreman; and millwrights through a Millwright Foreman. From 1991 through June 1993, Reed reported to Plant Manager Bruce Hendrickson.
- 33. Gary Reed knew that on a Saturday in 1986 a discharge pipe had been installed south of the plant facility under Oldenburg Road. On one occasion Gary Reed located a shutoff valve on the discharge pipe south of Oldenburg Road. While Gary Reed was Superintendent of Maintenance, Chemetoo employees in the maintenance department discharged contaminated water through the discharge pipe. Reed had reason to suspect that the discharge pipe was used to remove storm water contaminated with pollutants from the plant facility. Even though he was responsible for the maintenance of the plant facility, by failing to inquire or inspect, Reed showed conscious indifference as to whether maintenance department employees discharged contaminated storm water.
- 34. Bruce W. Hendrickson. Bruce W. Hendrickson was Chemetco's Plant Manager from 1991 to 1999. As Plant Manager, Mr. Hendrickson was in charge of the day-to-day operations and supervised the various foremen and supervisors of the Chemetco facility.
- 35. As Plant Manager, Hendrickson reported to David Hoff, President of Chemeteo, Inc.
- 36. While Plant Manager sometime in or around 1991, Hendrickson was informed by Larry Ort, Laborer Foreman, that contaminated storm water was discharged south of the plant

facility. Hendrickson understood that such discharge was not legally permissible. Even though as Plant Manager Hendrickson was responsible for such actions, he did not investigate or inquire further. Subsequently, when other managers or foremen informed Hendrickson that the problems of excess water had been handled, Hendrickson avoided inquiring as to how the excess water had been removed.

- 37. George J. Boud, Jr. George J. Boud, Jr. was Chemetco's Superimendent of Maintenance from 1993 through 1998; Mr. Boud replaced Gary Reed in that position. Prior to becoming Superintendent of Maintenance, Boud was employed by Chemetco as General Foreman under Superintendent of Maintenance Gary Reed. Prior to that time, Boud was employed as Electrical Foreman under Superintendents of Maintenance Sid Campbell and Gary Reed. Boud started employment with Chemetco in 1971.
- As the Superintendent of Maintenance, Boud managed the maintenance responsibilities for the Chemetoo facility and directly supervised the laborers through Kevin Youngman. Laborer Foreman; and millwrights through Roger Copeland, Millwright Foreman. From 1991 to 1998, Boud reported to Plant Manager Bruce Hendrickson.
- 39. While Superintendent of Maintenance, Boud directed employees to get rid of excess water on the grounds of the plant facility. These employees discharged contaminated water from a pipe starting at the East Canal of the facility. Boud understood that the excess water contaminated with pollutants would be discharged from the plant facility. Boud acted with conscious indifference to the method by which the employees discharged the contaminated water.
- 40. Kevin A. Youngman. Kevin A. Youngman was Chemetco's Laboter Foreman from early 1996 (before the Government's discovery of the secret pipe on September 18, 1996)

until his departure in June 1999. As Laborer Foreman, Mr. Youngman supervised the laborers.

Youngman had started with Chemetco as a laborer in May 1993. After six months, Youngman worked as a water truck driver and street sweeper operator. After another six months, he become Laborer Supervisor. In 1996, Youngman became the Laborer Foreman.

- 41. As Laborer Foreman, Youngman reported to Superintendent of Maintenance, George J. Boud, Jr.
- 42. While Laborer Foreman, Youngman, and employees upon his direction discharged excess water from the grounds of the plant facility. Youngman and these employees discharged contaminated water from a pipe starting at the East Canal of the facility. Youngman understood that the excess water contaminated with pollutants would be discharged from the plant.

So stipulated.

CHEMETOO., INC., a corporation Defendant.

through its corporate representative, DENNIS MEYER, Vice President

BRUCE N. COOK
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Date: [-//-00

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	
Plaintiff,	į
չ <sup>••</sup> <b>VS.</b>	) Criminal No. 99-30048-001-WDS
CHEMETCO, INC., a corporation,	)
Defendant.	j

#### DECLARATION OF THOMAS C. HORNSHAW, Ph.D.

- I, Thomas C. Hornshaw, Ph.D., declare the following:
- 1. My name is Thomas C. Hornshaw, and I am employed by the Illinois Environmental Protection Agency ("IEPA" or "Agency") as the Manager of the Toxicity Assessment Unit of the Office of Chemical Safety.
- 2. I have been with the Agency for over 14 years. I am a toxicologist by training, having received a dual Ph.D. from Michigan State University in 1985, in Animal Science and Environmental Toxicology.
- 3. Among my responsibilities at IEPA are several which support my qualifications to provide expert testimony in this case: I assist with the development and use of procedures for human and environmental exposure assessments and risk assessments; I review toxicological data and hazard information in support of Agency programs and actions; I review technical documents submitted to the Agency in support of remediation projects; I am a member of the Dioxin Workgroup of the Binational Toxics Strategy, a United States-Canadian partnership striving to achieve elimination of 13 persistent, bloaccumulative, and toxic chemicals; and I am the Chair of

the Illinois Fish Contaminant Monitoring Program, a joint effort of twe agencies whose task is the determination of the acceptability of chemical residues in sport fish. A complete summary of my duties and experience can be found in my curriculum vitae, which is attached as Attachment 1.

### Summary of Final Sampling and Analysis Report Long Lake - Mitchell, Illinois - June 1999 (Govt.'s Hearing Exhibit 45)

- I became involved in this case when i was requested to review the analytical results for metals and other inorganic chemicals in water and sediment samples collected by Agency field staff, and provide interpretation of the data.
- 5. As a result of my review, I determined that cadmium, copper, and fluoride are the chemicals of greatest concern in the water samples. I came to this conclusion by comparing the reported water concentrations with the corresponding surface water criteria (from 35 III. Adm. Code Part 302, Water Quality Standards) for each analyte.
- 6. From this comparison, I found that cadmium levels were as high as 13 micrograms per liter (ug/l) versus the standard of 3 ug/l, copper levels were as high as 83 ug/l versus the standard of 31 ug/l, and fluoride levels were as high as 20 milligrams per liter (mg/l) versus the standard of 1.4 mg/l.
- 7. For the court's information, the surface water standards are promulgated to protect all forms of aquatic life.
- 8. Regarding cadmium, copper, and fluoride, all three chemicals are toxic to fish and aquatic invertebrates, and copper is also toxic to aquatic plants.
- 9. After reviewing the sediment data, I determined that the chemicals of greatest concern are cadmium, copper, lead, nickel, and zinc.

- therefore my office uses surveys of state-wide sediment concentrations, conducted by our Bureau of Water, as screens for inorganic chemicals in sediment. See, e.g., Mitzelfelt, Jeffrey D., Sediment Classification for Illinois Inland Lakes, Illinois Environmental Protection Agency Bureau of Water Division of Water Pollution Cuntrol Planning Section Lake and Water Shed Unit, September 1996 (Govt.'s Hearing Exhibit 48). These surveys characterize the inorganics as low, normal, elevated, and highly elevated. Each of the five metals was elevated in at least one sample, and nickel and cadmium were highly elevated in several samples.
- 11. As a general statement regarding lead and cadmium, we are concerned in the Agency whenever these two heavy metals are found at elevated levels in any environmental sample because of their toxicity to most life forms.
- 12. These metals have no known biological or physiological functions in the body, and in fact they are known to replace or interfere with other metals such as calcium and zinc which have important functions in the body.
- 13. Thus, the presence of these metals, and also copper, nickel, and zinc. at elevated or highly elevated levels suggests the potential for effects on the organisms that live in the sediments.
- 14. The possibility also exists for effects on organisms that live in the water above the sediments, since these metals are able to dissolve into the surface water under some environmental conditions.

#### Final Field Sampling and Analysis Report - Organic Sampling Long Lake - Mitchell, Illinois - October 1999 (Govt's Hearing Exhibit 46)

- 15. Even though the Agency only requested analyses of metals and other inorganic chemicals, I determined that there was a need for analysis of certain other organic chemicals in sediment and fish samples from affected areas of Long Lake.
- 16. This need was triggered by previous work by the U.S. Environmental Protection Agency (Govt's Hearing Exhibit 47), which found polychlorinated dibenzodioxins (dioxins) and polychlorinated dibenzofurans (furans) in zinc oxide pits at the Chemetco facility.
- 17. Since the material discharged to Long Lake is very similar to that in the zinc oxide pits, I recommended that lake sediments and fish should be sampled for dioxins and furans.
- 18. For the court's information, the reason for concern about dioxins and furans is that they are strongly suspected of causing cancer in humans, and reproduction and fetal development problems in humans and animals.
- 19. They also readily bioaccumulate in the food chain, so it is possible that unhealthy levels might be found in higher-level organisms in the lake, especially fish.
- 20. It is possible that people and animals that eat these fish could then be exposed to dioxins and furans at unacceptable levels, which is why I recommended that fish samples be collected.
- 21. Dioxins and furans were detected in all three sediment samples and in a sample taken from the zinc oxide cooling water canal.

- 22. As stated above, there are no standards for sediments, and there are also no statewide survey levels for dioxins and furans from the Agency's Bureau of Water which can be used for comparison purposes.
- 23. However, a soil sample was collected from a local farmhouse as a background sample, which contained dioxins and furans at a level of 2.89 nanograms per kilogram (ng/kg).
- 24. The three sediment samples all significantly exceeded the background level, with the highest concentration being 123 ng/kg, and the cooling water canal sample also was much greater than the background level at 232 ng/kg.
- 25. What these sample results mean regarding potential impacts to humans and wildlife is unclear since the potential for exposure to dioxins and furans in sediments is difficult to predict.
- 26. What can be said is that the potential for exposure is greater than what would occur due to background levels of dioxins and furans in this area.
- 27. Regarding the fish samples analyzed, carp and buffalo filets, each were found to have trace levels of dioxins and furans.
- 28. There are no comparison values used by the Illinois Fish Contaminant Monitoring Program for dioxins and furans in sport fish, but the concentrations reported in the two samples, 0.019 and 0.059 ng/kg, are less than the most stringent level of 1.0 ng/kg used by some authorities to issue fish consumption advisories.
- 29. Thus, the levels in the two samples were low enough that it is not necessary at this time to warn residents about eating the fish. Since no samples of whole fish were analyzed (which are the types of samples needed to evaluate risks to wildlife), it is not possible to predict if there is a threat to animals which might eat fish from the lake at this time.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6, 2000.

THOMAS C. HORNSHAW, Ph.D.

Manager - Toxicity Assessment Unit

Office of Chemical Safety.

Illinois Environmental Protection Agency

#### **CURRICULUM VITAE**

#### THOMAS C. HORNSHAW

EDUCATION: Ph.D., Animal Science and Environmental Toxicology, 1985. M.S., 1981, and B.S., 1976, Fisheries Biology, Michigan State University.

EXPERIENCE: Senior Public Service Administrator, Office of Chemical Safety, Illinois Environmental Protection Agency, 1985 - Present.

Graduate Research Assistant, Department of Animal Science, Michigan State University, 1981 - 1984.

Graduate Research Assistant, Department of Fisheries and Wildlife, Michigan State University, 1978 - 1981.

Student Aide, Water Quality Division, Biology Section, Michigan Department of Natural Resources, 1976 - 1977.

FIELDS OF EXPERIENCE: At the Illinois Environmental Protection Agency, Dr. Hornshaw's major duties include the management of the Toxicity Assessment Unit within the Office of Chemical Safety; development and use of procedures for human and environmental exposure assessments and risk assessments; review of toxicological data and hazard information in support of Agency programs and actions; and critical review of remedial investigation and risk assessment documents submitted to the Agency during hazardous waste site investigations and cleanups. Dr. Hornshaw was a member of the Agency's Cleanup Objectives Team until 1993, when that Team's functions were assumed by the Toxicity Assessment Unit. As a member of the Air Toxics Action Committee, he participated in the development of Illinois' Air Toxics rules. He is one of the Agency!s representatives to the Great Lakes Toxic Substances Control Agreement (member of the Fish Advisory Task Force) and is the Chair of the multi-agency Illinois Fish Contaminant Monitoring Program. Dr. Hornshaw is also a member of the National Advisory Committee for Acute Exposure Guidance Levels, moderated by USEPA, whose task is the development of action levels for use in unplanned air releases of hazardous chemicals. In an earlier assignment at the Agency, Dr. Hornshaw assisted in the development of bioassay protocols and quality assurance procedures for the Biomonitoring Unit.

As part of his duties during his Ph.D. research at Michigan State University, Dr. Hornshaw conducted experiments to develop protocols for mammalian wildlife dietary LC<sub>50</sub> and reproduction tests, using mink and European ferrets as representative mammalian carnivores. He has published four papers in scientific journals as a result of this research, and the protocols developed from these studies have been published by USEPA.

As part of his duties during his M.S. research at Michigan State, Dr. Hornshaw conducted experiments to assess the suitability of several species of Great Lakes fish for animal feed, testing the fish in reproduction trials with mink. He quantitated levels of polychlorinated biphenyls in fish, mink fat, and mink milk as a portion of this research, and published the results of these

studies in a scientific journal. These results were also published in several trade journals serving the fur industry. He has authored or co-authored articles detailing the results of several other studies sponsored by the fur industry in these trade journals.

After receiving his Bachelor's degree from Michigan State, Dr. Hornshaw worked as a student aide in the Biology Section of the Water Quality Division of Michigan's Department of Natural Resources. His duties included assisting staff aquatic biologists in the collection of fish, water, sediment, and benthos samples. In laboratory work, in data handling, and in reporting requirements. His field experience included sample collection and identification from inland lakes, Great Lakes, and rivers and streams.

HONORS: Bachelor of Science, with honors; Member, Sigma Xi, the Scientific Research Society.

AFFILIATIONS: Member, Society of Environmental Toxicology and Chemistry.

#### THESES:

Hornshaw, T. C. 1984. Development of Dietary LC<sub>50</sub> and Reproduction Test Protocols Using Mink and Ferrets as Representative Mammalian Camivores. Ph.D. Thesis, Michigan State University, East Lansing, MI. 212pp.

Hornshaw, T. C. 1981. Renewed Use of Underutilized Species of Great Lakes Fish for Animal Feed. M.S. Thesis, Michigan State University, East Lansing, MI. 45pp.

#### PUBLICATIONS (Peer Reviewed):

Ringer, R. K., Hornshaw, T. C., and Aulerich, R. J. Mammalian Wildlife (Mink and Ferret) Toxicity Test Protocols (LC<sub>50</sub>, Reproduction, and Secondary Toxicity). U.S. Environmental Protection Agency Report No. EPA/600/3-91/043. July 1991. NTIS Document # PB91-216507.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1987. Toxicity of thiram (tetramethylthiuram disulfide) to mink and European ferrets. Bull. Environ. Contam. Toxicol. 38: 618 - 626.

Hornshaw, T. C., Ringer, R. K., Aulerich, R. J., and Casper, H. H. 1986. Toxicity of sodium monofluoroacetate (Compound 1080) to mink and European ferrets. Environ. Toxicol. Chem. 5: 213 - 223.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1986. Toxicity of o-cresol to mink and European ferrers. Environ. Toxicol. Chem. 5: 713 - 720.

Hornshaw, T. C., Safronoff, J., Ringer, R. K., and Auterich, R. J. 1986. LC<sub>50</sub> test results in polychlorinated biphenyl-fed mink: age, season, and diet comparisons. Arch. Environ. Contain. Toxicol. 15: 717 - 723.

Bleavins, M. R., Aulerich, R. J., Hochstein, J. R., Hornshaw, T. C., and Napolitano, A. C. 1983. Effects of excessive dietary zinc on the intra-uterine and postnatal development of mink. J. Nutr. 113: 2360 - 2367.

Hornshaw, T. C., Aulerich, R. J., and Johnson, H. E. 1983. Feeding Great Lakes fish to mink: effects on mink and accumulation and elimination of PCBs by mink. J. Toxicol. Environ. Health 11: 933 - 946.

#### PUBLICATIONS (Trade Journals):

Hornshaw, T. 1992. Illinois' Air Toxics selection process described. National Air Toxics Information Clearinghouse (NATICH) Newsletter. USEPA Office of Air Quality Planning and Standards, Research Triangle Park, NC. January, 1992.

Aulerich. R. J., Napolitano, A. C., and Hornshaw, T. C. 1986. How supplemental copper affects mink kit hemoglobin concentration. In <u>The Fur Rancher Blue Book of Fur Farming</u>. Communications Marketing, Inc., Eden Prairie, MN. pp. 42 - 46.

Hornshaw, T. C., Aulerich, R. J., and Ringer, R. K. 1985. Mineral concentrations in the hair of natural dark and pastel mink. Scientifur 9(3): 216-219.

Aulerich, R. J., Napolitano, A. C., and Hornshaw, T. C. 1985. Effect of supplemental copper on mink kit hemoglobin concentration. Pur Farmer's Gazette of the United Kingdom 35(4): 8-11.

Hornshaw, T. C., Aulerich, R. J., Johnson, H. E., and Ringer, R. K. 1982. How suitable are today's Great Lakes tish for use in feeding mink? Fur Rancher 62(9): 21 - 23.

Hornshaw, T. C., and Aulerich, R. J. 1980. Can Great Lakes fish again be fed safely to mink? In The Fur Rancher Blue Book of Fur Farming. Communications Marketing, Inc., Eden Prairie, MN. pp. 48 - 49.

#### PRESENTATIONS:

Hornshaw, T. C. "The Illinois Strategy for Endocrine Disruptors." Talk presented at The Endocrine Disruptor Debate: Environmental Chemicals and Reproductive and Developmental Health, October 17, 1997, St. Paul, MN.

Hornshaw, T. C. "Risk Pathways and Exposure Potential as Critical Factors in the Determination of Remedial Objectives." Talk presented at the Science for Environmental Professionals and Attorneys Conference, January 8, 1997, Chicago, II.

Hornshaw, T. C. "Potential Health Effects of Triazine Herbicides and Their Metabolites in Community Water Supplies." Talk presented at the 1996 Illinois Agricultural Pesticides Conference, January 3-4, 1996, Champaign, IL.

- Hornshaw, T. C. "The Illinois Fish Contaminant Monitoring Program." Talk presented at the Biannual Meeting of the Federal-State Toxicology and Risk Assessment Committee (FSTRAC), November 6-8, 1991, Chicago, IL.
- Hornshaw, T. C. "Assessing Exposure to Toxic Air Releases from a Chemical Facility: Illinois Acrylonitrile Exposure Assessment." Talk presented at the National Governors' Association Conference on Assessing Exposure to Toxic Contaminants: Issues and Problems Facing State Government, March 29, 1989, Salt Lake City, UT.
- Hornshaw, T. C. "Risk Assessment from State Point of View." Talk presented at the 1st Annual Hazardous Materials Management Conference/Central, March 16, 1988, Chicago, IL.
- Perino, J. V., Whitaker, J. B., and Hornshaw, T. C. Technical aspects of an aquatic toxicological testing program at a state regulatory agency. Poster presented at the 1st Annual Meeting of the Ozark-Prairie Chapter of the Society of Environmental Toxicology and Chemistry, April 24-26, 1986, Columbia, MO.
- Hornshaw, T. C. "Illinois EPA's Aquatic Toxicity Testing Program." Talk presented to the Illinois Environmental Consensus Forum. December 12, 1985. Springfield, IL.
- Aulerich, R. J., Bursian, S. J., Nachreiner, R. F., Olson, B. A., Hochstein, J. R., Hornshaw, T. C., and Koudele, K. A. Toxicological manifestations of dietary exposure to 3,4,5,3', 4', 5' hexachlorobiphenyl in mink. Poster presented at the 24th Annual Meeting of the Society of Toxicology, March 18-22, 1985, San Diego, CA.
- Hornshaw, T. C. "Effects of Feeding Great Lakes Fish to Mink." Talk presented at the Great Lakes Commercial Fisheries Workshop, March 12, 1985, Mackinaw City, MI.
- Hornshaw, T. C., Safronoff, J., Aulerich, R. J., and Ringer, R. K. Development and validation of dietary LC<sub>50</sub> test protocols for wildlife mammalian carnivores using mink and ferrets. Poster presented at the 5th Annual Meeting of the Society of Environmental Toxicology and Chemistry, November 4-7, 1984, Arlington, VA.
- Hornshaw, T. C., Ringer, R. K., and Aulerich, R. J. Toxicity of thiram to mink and European ferrets. Poster presented at the 23rd Annual Meeting of the Society of Toxicology, March 12-16, 1984, Atlanta, GA.
- Hornshaw, T. C., Ringer, R. K., and Aulerich, R. J. Toxicity of sodium monofluoroacetate (Compound 1080) to mink. Poster presented at the 22nd Annual Meeting of the Society of Toxicology, March 6-11, 1983, Las Vegas, NV.
- Hornshaw, T. C., Aulerich, R. I., Johnson, H. E., and Ringer, R. K. Suitability of today's Great Lakes fish for animal feed. Poster presented at the International Symposium on PCBs in the Great Lakes, March 15-17, 1982, East Lansing, MI.